

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 368

Introduced by Erdman, 47

Read first time January 12, 2007

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to cooperative associations; to amend section
2 77-5509, Reissue Revised Statutes of Nebraska, and
3 sections 77-2716, 77-27,187.01, 77-27,194, 77-5719,
4 77-5728, and 77-5903, Revised Statutes Cumulative
5 Supplement, 2006; to adopt the Nebraska Limited
6 Cooperative Association Act; to provide an operative
7 date; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 133 of this act shall be known
2 and may be cited as the Nebraska Limited Cooperative Association
3 Act.

4 Sec. 2. The Legislature shall have the power to amend or
5 repeal all or part of the Nebraska Limited Cooperative Association
6 Act at any time and all domestic and foreign limited cooperative
7 associations subject to the act shall be governed by the amendment
8 or repeal.

9 Sec. 3. For purposes of the Nebraska Limited Cooperative
10 Association Act, unless the context otherwise requires:

11 (1) Articles of organization includes initial, amended,
12 and restated articles of organization. In the case of a foreign
13 limited cooperative, the term includes all records that:

14 (a) Have a function similar to articles of organization;
15 and

16 (b) Are required to be filed in the office of the
17 Secretary of State or other official having custody of articles of
18 organization in this state or the country under whose law it is
19 organized;

20 (2) Bylaws includes initial, amended, and restated
21 bylaws;

22 (3) Contribution means a benefit that a person provides
23 to a limited cooperative association in order to become a
24 participant or in the person's capacity as a participant;

25 (4) Debtor in bankruptcy means a person that is the

1 subject of:

2 (a) An order for relief under 11 U.S.C. section 101 et
3 seq., as the sections existed on the operative date of this act; or

4 (b) An order comparable to an order described in
5 subdivision (4) (a) of this section under federal, state, or foreign
6 law governing insolvency;

7 (5) Designated office means the office designated under
8 section 13 of this act;

9 (6) Distribution means a transfer of money or other
10 property from a limited cooperative association to a participant
11 in the participant's capacity as a participant or to a transferee
12 because of a right owned by the transferee;

13 (7) Domestic entity means an entity organized under the
14 laws of this state;

15 (8) Entity means an association, a business trust,
16 a company, a corporation, a limited cooperative association,
17 a general partnership, a limited liability company, a limited
18 liability limited partnership, a limited liability partnership, or
19 a limited partnership, domestic or foreign;

20 (9) Financial rights means the right to participate in
21 allocation and distribution under sections 78 and 79 of this
22 act but does not include rights or obligations under a marketing
23 contract governed by sections 49 to 52 of this act;

24 (10) Foreign limited cooperative association means a
25 foreign entity organized under a law similar to the Nebraska

1 Limited Cooperative Association Act in another jurisdiction;

2 (11) Foreign entity means an entity that is not a
3 domestic entity;

4 (12) Governance rights means the right to participate in
5 governance of the limited cooperative association under section 28
6 of this act;

7 (13) Investor participant means a person admitted as
8 an investor participant in accordance with the articles of
9 organization or bylaws and who is not permitted or required
10 by the articles of organization or bylaws to conduct patronage
11 business with the limited cooperative association in order to
12 receive financial rights or distributions;

13 (14) Limited cooperative association means an association
14 organized under the Nebraska Limited Cooperative Association Act;

15 (15) Participant means a person that is a participant
16 in a limited cooperative association and includes patron and
17 investor participants. The term does not include a person that has
18 dissociated as a participant;

19 (16) Participants' interest means patron and investor
20 interests;

21 (17) Participants' meeting means an annual or a special
22 participants' meeting;

23 (18) Patron means a person or entity that conducts
24 economic activity with a limited cooperative association on a
25 patronage basis;

1 (19) Patronage means business transactions between a
2 limited cooperative association and a person which entitles this
3 person to receive financial rights, distributions, or payments
4 from the limited cooperative association based on the value or
5 quantity of business done with the person relative to the financial
6 performance of the limited cooperative association;

7 (20) Patron participant means a person admitted as a
8 patron participant pursuant to the articles of organization or
9 bylaws and who is permitted or required by the articles of
10 organization or bylaws to conduct patronage business with the
11 limited cooperative association in order to receive financial
12 rights or distributions;

13 (21) Person means an individual; entity; trust;
14 governmental subdivision, agency, or instrumentality; or any other
15 legal or commercial entity;

16 (22) Principal office means the office, whether or
17 not in this state, where the principal executive office of a
18 limited cooperative association or a foreign limited cooperative
19 association is located;

20 (23) Record, used as a noun, means information that is
21 inscribed on a tangible medium or that is stored in an electronic
22 or other medium and is retrievable in perceivable form;

23 (24) Required information means the information a limited
24 cooperative association is required to maintain under section 10 of
25 this act;

1 (25) Sign means, with the present intent to authenticate
2 a record:

3 (a) To execute or adopt a tangible symbol; or

4 (b) To attach or logically associate an electronic
5 symbol, sound, or process to or with a record;

6 (26) State means a state of the United States, the
7 District of Columbia, Puerto Rico, the United States Virgin
8 Islands, or any territory or insular possession subject to the
9 jurisdiction of the United States;

10 (27) Transfer includes an assignment, conveyance, deed,
11 bill of sale, lease, mortgage, security interest, encumbrance,
12 gift, and transfer by operation of law; and

13 (28) Voting participant means a participant that, under
14 the articles of organization or bylaws, has a right to vote on
15 matters subject to vote by participants.

16 Sec. 4. (1) A limited cooperative association is an
17 entity distinct from its participants.

18 (2) A limited cooperative association may be organized
19 under the Nebraska Limited Cooperative Association Act for any
20 lawful purpose, regardless of whether or not for profit, except for
21 the purpose of being a financial institution which is subject to
22 supervision by the Department of Banking and Finance under section
23 8-102 or which would be subject to supervision by the department if
24 chartered by the State of Nebraska or the business of an insurer as
25 described in section 44-102.

1 (3) A limited cooperative association has a perpetual
2 duration, unless otherwise set forth in its articles of
3 organization or bylaws.

4 Sec. 5. A limited cooperative association has the power
5 to do all things necessary or convenient to carry on its
6 activities, including the power to sue, be sued, and defend in its
7 own name and to maintain an action against a participant for harm
8 caused to the limited cooperative association by a violation of
9 the articles of organization or bylaws of the limited cooperative
10 association or violation of a duty to the limited cooperative
11 association.

12 Sec. 6. (1) The name of a limited cooperative association
13 must contain the words "limited cooperative association" or their
14 abbreviation.

15 (2) Except as authorized by subdivisions (2)(b) and (c)
16 of this subsection, the name of a limited cooperative association
17 shall be distinguishable upon the records of the Secretary of State
18 from:

19 (a) The name of any entity organized or authorized to
20 transact business in this state;

21 (b) A name reserved or registered under section 7 or 8 of
22 this act; and

23 (c) A fictitious name approved for a foreign limited
24 cooperative association authorized to transact business in this
25 state.

1 Sec. 7. (1) A person may reserve the exclusive use of the
2 name of a limited cooperative association, including a fictitious
3 name for a foreign limited cooperative association whose name is
4 unavailable, by delivering an application to the Secretary of State
5 for filing. The application shall set forth the name and address
6 of the applicant and the name proposed to be reserved. If the
7 Secretary of State finds that the name applied for is available,
8 it shall be reserved for the applicant's exclusive use for a
9 nonrenewable one hundred twenty-day period.

10 (2) The owner of a name reserved for a limited
11 cooperative association may transfer the reservation to another
12 person by delivering to the Secretary of State a signed notice of
13 the transfer which states the name and address of the transferee.

14 Sec. 8. (1) A foreign limited cooperative association may
15 register its name pursuant to section 7 of this act if the name
16 is distinguishable upon the records of the Secretary of State from
17 names that are unavailable under section 6 of this act.

18 (2) A foreign limited cooperative association may
19 register its name, or its name with any addition required by
20 section 106 of this act, by delivering to the Secretary of State
21 for filing an application:

22 (a) Setting forth its name, or its name with any addition
23 required by section 106 of this act, the state or country of
24 organization and date of its organization, and a brief description
25 of the nature of the affairs in which it is engaged; and

1 (b) Accompanied by a certificate of existence or a record
2 of similar import from the state or country of organization.

3 (3) A foreign limited cooperative association whose
4 registration is effective may qualify as a foreign limited
5 cooperative association under its name or consent in a record to
6 the use of its name by a limited cooperative association later
7 organized under the Nebraska Limited Cooperative Association Act
8 or by a foreign limited cooperative association later authorized
9 to transact business in this state. The registration of the name
10 terminates when the limited cooperative association is organized or
11 the foreign limited cooperative association qualifies or consents
12 to the qualification of another foreign limited cooperative
13 association under the registered name.

14 Sec. 9. The use of the terms "cooperative or nonstock
15 cooperative" or an abbreviation of the terms under the Nebraska
16 Limited Cooperative Association Act is not a violation of the
17 provisions restricting the use of the terms under sections 21-1301
18 to 21-1339 or the Nonstock Cooperative Marketing Act, however,
19 use of the term "cooperative" by a limited cooperative association
20 shall not be construed under any other law to qualify a limited
21 cooperative association as a cooperative organized under sections
22 21-1301 to 21-1339 or the Nonstock Cooperative Marketing Act.

23 Sec. 10. A limited cooperative association shall maintain
24 in a record at its principal office the following information:

25 (1) A current list showing the full name and last

1 known street address, mailing address, and term of office of each
2 director and officer;

3 (2) A copy of the initial articles of organization and
4 all amendments to and restatement of the articles, together with
5 signed copies of any powers of attorney under which any articles,
6 amendments, or restatement has been signed;

7 (3) A copy of the initial bylaws and all amendments to or
8 restatement of;

9 (4) A copy of any filed articles of consolidation or
10 merger;

11 (5) A copy of any audited financial statements;

12 (6) A copy of the minutes of meetings of participants and
13 records of all actions taken by participants without a meeting for
14 the three most recent years;

15 (7) A current list showing the full name and last known
16 street and mailing addresses, separately identifying the patron
17 participants, in alphabetical order, and the investor participants,
18 in alphabetical order;

19 (8) A copy of the minutes of directors' meetings and
20 records of all actions taken by directors without a meeting for the
21 three most recent years;

22 (9) A record stating:

23 (a) The amount of cash contributed and agreed to be
24 contributed by each participant;

25 (b) A description and statement of the agreed value of

1 other benefits contributed and agreed to be contributed by each
2 participant;

3 (c) The times at which, or events on the happening of
4 which, any additional contributions agreed to be made by each
5 participant are to be made; and

6 (d) For a person that is both a patron participant and
7 investor participant, a specification of the interest the person
8 owns in each capacity; and

9 (10) A copy of all communications in a record to
10 participants as a group or to any class of participants as a
11 group for the three most recent years.

12 Sec. 11. A participant may lend money to and transact
13 other business with the limited cooperative association and has
14 the same rights and obligations with respect to the loan or other
15 transaction as a person that is not a participant subject to the
16 articles of organization or bylaws or a specific contract relating
17 to the transaction.

18 Sec. 12. A person may be both a patron participant and
19 an investor participant. A person that is both a patron participant
20 and an investor participant has the rights, powers, duties,
21 and obligations provided by the Nebraska Limited Cooperative
22 Association Act and the articles of organization or bylaws in
23 each of those capacities. When the person acts as a patron
24 participant, the person is subject to the obligations, duties, and
25 restrictions under the act and the articles of organization or

1 bylaws governing patron participants. When the person acts as an
2 investor participant, the person is subject to the obligations,
3 duties, and restrictions under the act and the articles of
4 organization or bylaws governing investor participants.

5 Sec. 13. (1) A limited cooperative association and
6 a foreign limited cooperative association shall designate and
7 continuously maintain in this state:

8 (a) An office, which need not be a place of its activity
9 in this state; and

10 (b) An agent for service of process.

11 (2) An agent for service of process of a limited
12 cooperative association or foreign limited cooperative association
13 shall be an individual who is a resident of this state or other
14 person authorized to do business in this state.

15 Sec. 14. (1) In order to change its registered office,
16 its agent for service of process, or the address of its agent for
17 service of process, a limited cooperative association or a foreign
18 limited cooperative association shall deliver to the Secretary of
19 State for filing a statement of change containing:

20 (a) The name of the limited cooperative association or
21 foreign limited cooperative association;

22 (b) The street and mailing addresses of its current
23 registered office;

24 (c) If the current registered office is to be changed,
25 the street and mailing addresses of the new registered office;

1 (d) The name and street and mailing addresses of its
2 current agent for service of process; and

3 (e) If the current agent for service of process or an
4 address of the agent is to be changed, the new information.

5 (2) A statement of change is effective when filed with
6 the Secretary of State.

7 Sec. 15. (1) To resign as an agent for service of
8 process of a limited cooperative association or a foreign limited
9 cooperative association, the agent shall deliver to the Secretary
10 of State for filing a statement of resignation containing the
11 name of the limited cooperative association or foreign limited
12 cooperative association.

13 (2) After receiving a statement of resignation, the
14 Secretary of State shall file it and mail a copy to the principal
15 office of the limited cooperative association or foreign limited
16 cooperative association and another copy to the principal office
17 if the address of the principal office appears in the records of
18 the Secretary of State and is different from the address of the
19 registered office.

20 (3) An agency for service of process terminates thirty
21 days after the Secretary of State files the statement of
22 resignation.

23 Sec. 16. (1) An agent for service of process appointed by
24 a limited cooperative association or a foreign limited cooperative
25 association is an agent of the limited cooperative association or

1 foreign limited cooperative association for service of any process,
2 notice, or demand required or permitted by law to be served upon
3 the limited cooperative association or foreign limited cooperative
4 association.

5 (2) If a limited cooperative association or a foreign
6 limited cooperative association does not appoint or maintain an
7 agent for service of process in this state or the agent for
8 service of process cannot with reasonable diligence be found at the
9 agent's address, the Secretary of State is the agent of the limited
10 cooperative association or foreign limited cooperative association
11 upon whom process, notice, or demand may be served.

12 (3) Service of any process, notice, or demand on the
13 Secretary of State may be made by delivering to and leaving with
14 the Secretary of State duplicate copies of the process, notice, or
15 demand. If a process, notice, or demand is served on the Secretary
16 of State, the Secretary of State shall forward one of the copies
17 by registered or certified mail, return receipt requested, to
18 the limited cooperative association or foreign limited cooperative
19 association at its designated office.

20 (4) Service is effected under subsection (3) of this
21 section at the earliest of:

22 (a) The date the limited cooperative association or
23 foreign limited cooperative association receives the process,
24 notice, or demand;

25 (b) The date shown on the return receipt, if signed on

1 behalf of the limited cooperative association or foreign limited
2 cooperative association; or

3 (c) Five days after the process, notice, or demand is
4 deposited in the mail, if mailed postpaid and correctly addressed.

5 (5) The Secretary of State shall keep a record of each
6 process, notice, and demand served pursuant to this section and
7 record the time of the service and the action taken regarding the
8 service.

9 (6) This section does not affect the right to serve
10 process, notice, or demand in any other manner provided by law.

11 Sec. 17. (1) Records delivered to the Secretary of State
12 for filing pursuant to the Nebraska Limited Cooperative Association
13 Act shall be signed in the following manner:

14 (a) The initial articles of organization shall be signed
15 by at least one organizer;

16 (b) A statement of cancellation under section 108 of this
17 act shall be signed by each organizer that signed the initial
18 articles of organization;

19 (c) Except as otherwise provided in this subsection,
20 a record signed on behalf of an existing limited cooperative
21 association shall be signed by an officer;

22 (d) A record filed on behalf of a dissolved limited
23 cooperative association by a person winding up the activities under
24 section 88 of this act or a person appointed under such section to
25 wind up those activities; and

1 (e) Any other record shall be signed by the person on
2 whose behalf the record is delivered to the Secretary of State.

3 (2) Any record to be filed under the Nebraska Limited
4 Cooperative Association Act may be signed by an authorized agent.

5 Sec. 18. (1) If a person required by the Nebraska Limited
6 Cooperative Association Act to sign or deliver a record to the
7 Secretary of State for filing does not do so, any other aggrieved
8 person may petition the district court of Lancaster County to
9 order:

10 (a) The person to sign the record and the person to
11 deliver the record to the Secretary of State for filing; or

12 (b) The Secretary of State to file the record unsigned.

13 (2) If an aggrieved person under subsection (1) of this
14 section is not the limited cooperative association or foreign
15 limited cooperative association to which the record pertains, the
16 aggrieved person shall make the limited cooperative association or
17 foreign limited cooperative association a party to the action. An
18 aggrieved person under subsection (1) of this section may seek any
19 or all of the remedies provided in such subsection in the same
20 action.

21 (3) A record filed unsigned pursuant to this section is
22 effective without being signed.

23 Sec. 19. (1) A record authorized to be delivered to
24 the Secretary of State for filing under the Nebraska Limited
25 Cooperative Association Act shall be captioned to describe the

1 record's purpose and be delivered to the Secretary of State in
2 a medium and to the extent permitted by the Secretary of State.
3 Unless the Secretary of State determines that a record does not
4 comply with the filing requirements of the act and if all filing
5 fees have been paid the Secretary of State shall file the record
6 and send a copy of the filed record and a receipt for the fees to
7 the person on whose behalf the record was filed.

8 (2) Upon request and payment of a fee, the Secretary of
9 State shall send to the requester a certified copy of the requested
10 record.

11 (3) Except as otherwise provided in the act, a record
12 delivered to the Secretary of State for filing under the act may
13 specify an effective time and a delayed effective date. Except as
14 otherwise provided in the act, a record filed by the Secretary of
15 State is effective:

16 (a) If the record does not specify an effective time and
17 does not specify a delayed effective date, on the date and at the
18 time the record is filed as evidenced by the Secretary of State's
19 endorsement of the date and time on the record;

20 (b) If the record specifies an effective time but not a
21 delayed effective date, on the date the record is filed at the time
22 specified in the record;

23 (c) If the record specifies a delayed effective date but
24 not an effective time, at 12:01 a.m. on the earlier of:

25 (i) The specified date; or

1 (ii) The ninetieth day after the record is files; or
2 (d) If the record specifies an effective time and a
3 delayed effective date, at the specified time on the earlier of:

4 (i) The specified date; or

5 (ii) Ninety days after the record is filed.

6 Sec. 20. (1) A limited cooperative association or foreign
7 limited cooperative association may deliver to the Secretary of
8 State for filing a statement of correction to correct a record
9 previously delivered by the limited cooperative association or
10 foreign limited cooperative association to the Secretary of State
11 and filed by the Secretary of State, if at the time of filing the
12 record contained false or erroneous information or was defectively
13 signed.

14 (2) A statement of correction shall not state a delayed
15 effective date and shall:

16 (a) Describe the record to be corrected, including its
17 filing date, or contain an attached copy of the record as filed;

18 (b) Specify the incorrect information and the reason it
19 is incorrect or the manner in which the signing was defective; and

20 (c) Correct the incorrect information or defective
21 signature.

22 (3) When filed by the Secretary of State, a statement of
23 correction is effective retroactively as of the effective date of
24 the record the statement corrects, but the statement is effective
25 when filed as to persons relying on the uncorrected record and

1 adversely affected by the correction prior to its correction.

2 Sec. 21. If a record delivered to the Secretary of State
3 for filing under the Nebraska Limited Cooperative Association Act
4 and filed by the Secretary of State contains false information, a
5 person that suffers loss by reliance on the information may recover
6 damages for the loss from a person that signed the record or caused
7 another to sign it on the person's behalf and knew the information
8 to be false at the time the record was signed.

9 Sec. 22. (1) The Secretary of State, upon application
10 and payment of the required fee, shall furnish a certificate of
11 existence for a limited cooperative association if the records
12 filed in the office of the Secretary of State show that the
13 Secretary of State has filed articles of organization, the limited
14 cooperative association is in good standing, and there has not been
15 filed a statement of termination.

16 (2) The Secretary of State, upon application and payment
17 of the required fee, shall furnish a certificate of authorization
18 for a foreign limited cooperative association if the records filed
19 in the office of the Secretary of State show that the Secretary
20 of State has filed a certificate of authority, has not revoked
21 the certificate of authority, and has not filed a notice of
22 cancellation pursuant to section 108 of this act.

23 (3) Subject to any qualification stated in the
24 certificate, a certificate of good standing or authorization issued
25 by the Secretary of State may be relied upon as conclusive evidence

1 that the limited cooperative association or foreign limited
2 cooperative association is in good standing or is authorized to
3 transact business in this state.

4 Sec. 23. (1) A limited cooperative association or a
5 foreign limited cooperative association authorized to transact
6 business in this state shall deliver to the Secretary of State for
7 filing an annual report that states:

8 (a) The name of the limited cooperative association or
9 foreign limited cooperative association;

10 (b) The street and mailing addresses of the association's
11 or limited cooperative association's designated office and the name
12 and street and mailing addresses of its agent for service of
13 process in this state;

14 (c) In the case of a limited cooperative association, the
15 street and mailing addresses of its principal office if different
16 from its designated office; and

17 (d) In the case of a foreign limited cooperative
18 association, the state or other jurisdiction under whose law
19 the foreign cooperative is formed and any alternative name adopted
20 under section 106 of this act.

21 (2) Information in an annual report must be current as of
22 the date the annual report is delivered to the Secretary of State.

23 (3) The first annual report must be delivered to the
24 Secretary of State between January 1 and April 1 of the year
25 following the calendar year in which the limited cooperative

1 association was formed or the foreign limited cooperative
2 association was authorized to transact business in this state. An
3 annual report must be delivered to the Secretary of State between
4 January 1 and April 1 of each subsequent calendar year.

5 (4) If an annual report does not contain the information
6 required in subsection (1) of this section, the Secretary of
7 State shall promptly notify the reporting limited cooperative
8 association or foreign limited cooperative association and return
9 the report for correction. If the report is corrected to contain
10 the information required in subsection (1) of this section and
11 delivered to the Secretary of State within thirty days after the
12 effective date of the notice, it is timely delivered.

13 (5) If a filed annual report contains an address of a
14 designated office or the name or address of an agent for service of
15 process which differs from the information shown in the records of
16 the Secretary of State immediately before the filing, the differing
17 information in the annual report is considered a statement of
18 change under section 14 of this act.

19 (6) If a limited cooperative association fails to file
20 an annual report under this section, the Secretary of State may
21 proceed under section 93 of this act to administratively dissolve
22 the association.

23 (7) If a foreign limited cooperative association fails to
24 file an annual report under this section, the Secretary of State
25 may proceed under section 107 of this act to revoke the certificate

1 of authority of the foreign limited cooperative association.

2 Sec. 24. The filing fees for records filed under this
3 section with the Secretary of State are governed by section 33-101.

4 Sec. 25. A limited cooperative association may be
5 organized by one or more organizers who need not be members.

6 Sec. 26. (1) To form a limited cooperative association,
7 articles of organization shall be delivered to the Secretary of
8 State for filing. The articles shall state:

9 (a) The name of the limited cooperative association;

10 (b) The purposes for which the limited cooperative
11 association was formed;

12 (c) The street and mailing addresses of the initial
13 registered office and the name, street, and mailing addresses of
14 the registered agent for service of process;

15 (d) The name and the street and mailing addresses of each
16 organizer;

17 (e) The term for which the limited cooperative
18 association is to exist, if other than perpetual;

19 (f) The number and terms of directors or the method in
20 which the number and terms shall be determined; and

21 (g) Any additional information required by the Secretary
22 of State.

23 (2) Articles of organization may contain any other
24 matters deemed relevant by the organizer or organizers.

25 (3) Unless the articles of organization state a delayed

1 effective date, a limited cooperative association is formed when
2 the Secretary of State files the articles of organization. If the
3 articles state a delayed effective date, a limited cooperative
4 association is not formed if, before the articles take effect, one
5 or more organizers sign and deliver to the Secretary of State for
6 filing a statement of cancellation.

7 Sec. 27. After the effective date of the articles of
8 organization:

9 (1) If initial directors are named in the articles of
10 organization, the initial directors shall hold an organizational
11 meeting to appoint officers, adopt initial bylaws, and carry on any
12 other business brought before the meeting; and

13 (2) If initial directors are not named in the articles of
14 organization, the organizers shall designate the initial directors
15 and call a meeting of them to adopt initial bylaws or carry on any
16 other business necessary and proper to complete the organization of
17 the limited cooperative association.

18 Sec. 28. (1) The bylaws shall be in a record and, if not
19 stated in the articles of organization, include:

20 (a) A statement of the capital structure of the limited
21 cooperative association, including a statement of the classes
22 and relative rights, preferences, and restrictions granted to or
23 imposed upon each group, class, or other type of participant
24 interest, the rights to share in profits or distributions of
25 the limited cooperative association, and the method to admit

1 participants;

2 (b) A statement designating the voting and governance
3 rights, including which participants have voting power and any
4 limitations or restrictions on the voting power under sections 39
5 and 42 of this act;

6 (c) A statement that participant interests held by a
7 participant are transferable only with the approval of the board of
8 directors or as otherwise provided in the articles of organization
9 or bylaws; and

10 (d) If investor participants are authorized, a statement
11 concerning how profits and losses are apportioned and how
12 distributions are made as between patron participants and investor
13 participants.

14 (2) The bylaws of the limited cooperative association may
15 contain any provision for managing and regulating the affairs of
16 the limited cooperative association which is not inconsistent with
17 the articles of organization.

18 Sec. 29. In order to commence business a limited
19 cooperative association shall have two or more patron participants
20 except a limited cooperative association may have only one
21 participant if the participant is an entity organized under the
22 Nebraska Limited Cooperative Association Act.

23 Sec. 30. A person becomes a participant:

24 (1) As provided in the articles of organization and
25 bylaws;

1 (2) As the result of merger or consolidation under
2 section 122 or 128 of this act; or

3 (3) With the consent of all the participants.

4 Sec. 31. A participant does not have the right or power
5 as a participant to act for or bind the limited cooperative
6 association.

7 Sec. 32. Unless otherwise provided by the articles of
8 organization, an obligation of a limited cooperative association,
9 whether arising in contract, tort, or otherwise, is not the
10 obligation of a participant. A participant is not personally
11 liable, by way of contribution or otherwise, for an obligation of
12 the limited cooperative association solely by reason of being a
13 participant.

14 Sec. 33. (1) On ten days demand, made in a record
15 received by the limited cooperative association, a participant
16 may inspect and copy required information under subdivisions (1)
17 through (7) of section 10 of this act during regular business hours
18 in the limited cooperative association's principal office. A demand
19 to inspect and copy records shall be in good faith and for a
20 proper purpose. A participant may demand the same information under
21 subdivisions (1) through (7) of section 10 of this act no more than
22 once during a twelve-month period.

23 (2) On demand, made in a record received by the limited
24 cooperative association, a participant may obtain from the limited
25 cooperative association and inspect and copy required information

1 if the demand is just and reasonable. A demand to inspect and copy
2 records is just and reasonable if:

3 (a) The participant seeks the information for a proper
4 purpose reasonably related to the participant's interest as a
5 participant;

6 (b) The demand includes a description, with reasonable
7 particularity, of the information sought and the purpose for
8 seeking the information; and

9 (c) The information sought is directly connected to the
10 participant's purpose.

11 (3) Within ten days after receiving a demand pursuant
12 to subdivision (2)(b) of this section, the limited cooperative
13 association shall inform, in a record, the participant that made
14 the demand:

15 (a) Of what information the limited cooperative
16 association will provide in response to the demand;

17 (b) Of the reasonable time and place that the limited
18 cooperative association will provide the information; and

19 (c) That the limited cooperative association will decline
20 to provide any demanded information and the limited cooperative
21 association's reasons for declining.

22 (4) A person dissociated as a participant pursuant to
23 section 82 of this act may inspect and copy required information
24 during regular business hours in the limited cooperative
25 association's principal office, if:

1 (a) The information pertains to the period during which
2 the person was a participant;

3 (b) The person seeks the information in good faith; and

4 (c) The person complies with section 33 of this act.

5 (5) The limited cooperative association shall respond to
6 a demand made pursuant to subsection (4) of this section in the
7 same manner as provided in section 33 of this act.

8 (6) The limited cooperative association may impose
9 reasonable restrictions, including nondisclosure restrictions,
10 on the use of information obtained under this section. In a
11 dispute concerning the reasonableness of a restriction, the limited
12 cooperative association has the burden of proving reasonableness.

13 (7) A limited cooperative association may charge a person
14 that makes a demand under this section reasonable costs of copying,
15 limited to the costs of labor and material.

16 (8) A participant or person dissociated as a participant
17 may exercise the rights under this section through an attorney
18 or other agent. A restriction imposed under this section or by
19 the articles of organization or bylaws on a participant or person
20 dissociated as a participant applies both to the attorney or
21 other agent and to the participant or person dissociated as a
22 participant.

23 (9) The rights stated in this section do not extend
24 to a person as transferee but may be exercised by the legal
25 representative of an individual under legal disability who is a

1 participant or person dissociated as a participant.

2 Sec. 34. (1) The participants of the limited cooperative
3 association shall meet annually as provided in the articles of
4 organization or bylaws or at the direction of the board of
5 directors not inconsistent with the articles of organization or
6 bylaws.

7 (2) Annual participants' meetings may be held in or out
8 of this state at the place stated in the articles of organization
9 or bylaws or by the board of directors in accordance with the
10 articles of organization or bylaws.

11 (3) The board of directors shall report or cause to
12 be reported at the annual participants' meeting the business and
13 financial condition as of the close of the most recent fiscal year.

14 (4) Unless otherwise provided by the articles of
15 organization or bylaws, the board of directors shall designate the
16 presiding officer of the annual participants' meeting.

17 Sec. 35. (1) Special participants' meetings shall be
18 called:

19 (a) As provided in the articles of organization or
20 bylaws;

21 (b) By a majority vote of the board of directors;

22 (c) By demand in a record signed by participants holding
23 at least ten percent of the votes of any class or group entitled to
24 cast on the matter that is the purpose of the meetings; or

25 (d) By demand in a record signed by participants holding

1 at least ten percent of all votes entitled to be cast on the matter
2 that is the purpose of the meeting.

3 (2) Any voting member may withdraw its demand under this
4 section before the receipt by the limited cooperative association
5 of demands sufficient to require a special participants' meeting.

6 (3) A special participants' meeting may be held in or out
7 of this state at the place stated in the articles of organization
8 or bylaws or by the board of directors in accordance with the
9 articles of organization or bylaws.

10 (4) Only affairs within the purpose or purposes stated
11 pursuant to subsection (2) of section 65 of this act may be
12 conducted at a special participants' meeting.

13 (5) Unless otherwise provided by the articles of
14 organization or bylaws, the presiding officer of the meeting shall
15 be designated by the board of directors.

16 Sec. 36. (1) The limited cooperative association shall
17 notify each participant of the time, date, and place of any annual
18 or special participants' meeting not less than ten nor more than
19 fifty days before the meeting.

20 (2) Unless the articles of organization or bylaws
21 otherwise provide, notice of an annual participants' meeting need
22 not include a description of the purpose or purposes of the
23 meeting.

24 (3) Notice of a special participants' meeting shall
25 include a description of the purpose or purposes of the meeting as

1 contained in the demand under section 35 of this act or as voted
2 upon by the board of directors under such section.

3 Sec. 37. (1) A participant may waive notice of any
4 meeting of the participants either before, during, or after the
5 meeting.

6 (2) A participant's participation in a meeting is waiver
7 of notice of that meeting unless the participant objects to the
8 meeting at the beginning of the meeting or promptly upon arrival at
9 the meeting and does not thereafter vote for or assent to action
10 taken at the meeting.

11 Sec. 38. Unless the articles of organization or bylaws
12 provide otherwise, ten percent, but not less than five nor more
13 than fifty of the participants, need to be present at an annual or
14 special participants' meeting to constitute a quorum.

15 Sec. 39. (1) Each patron participant has one vote but the
16 articles of organization or bylaws may provide additional voting
17 power to participants on the basis of patronage under section 41 of
18 this act and may provide for voting by district, group, or class
19 under section 26 of this act.

20 (2) If a limited cooperative association has both patron
21 and investor participants:

22 (a) The aggregate voting power of all patron participants
23 shall not be less than fifty-one percent of the entire voting power
24 entitled to vote but the articles of organization or bylaws may
25 reduce the collective voting power of patron participants to not

1 less than fifteen percent of the entire voting power entitled to
2 vote; and

3 (b) The entire aggregate voting power of patron
4 participants shall be voted as determined by the majority vote of
5 patron participants voting at the participants' meeting.

6 Sec. 40. (1) Unless otherwise provided by the articles
7 of organization or bylaws, any action that may be taken by the
8 participants may be taken without a meeting if each participant
9 entitled to vote on such action consents to the action in a record.

10 (2) Consent may be withdrawn by a participant in a record
11 at any time before the limited cooperative association receives a
12 consent from each participant entitled to vote.

13 (3) The consent record of any action may specify the
14 effective date or time of the action.

15 Sec. 41. The articles of organization or bylaws may
16 provide additional voting power be allocated for each patron
17 participant for:

18 (1) Actual, estimated, or potential patronage or any
19 combination thereof;

20 (2) Equity allocated or held by a patron participant in
21 the limited cooperative association; or

22 (3) Any combination of subdivisions (1) and (2) of this
23 section.

24 Sec. 42. If the articles of organization or bylaws
25 provide for investor participants, each investor participant

1 has one vote except as otherwise provided by the articles of
2 organization or bylaws.

3 Sec. 43. (1) Proxy voting by participants is prohibited.

4 (2) Delegate voting based upon geographical district,
5 group, or class is not voting by proxy under this section.

6 (3) The articles of organization or bylaws may provide
7 for participant voting by secret ballot delivered by mail or other
8 means.

9 (4) The articles of organization or bylaws may provide
10 for participants to attend meetings or conduct participant meetings
11 through the use of any means of communication, if all participants
12 attending the meeting can simultaneously communicate with each
13 other during the meeting.

14 Sec. 44. (1) The articles of organization or bylaws may
15 provide:

16 (a) For the formation of districts and the conduct of
17 participant meetings by districts and that elections of directors
18 may be held at district meetings; or

19 (b) That districts may elect district delegates to
20 represent and vote for the district in annual and special meetings
21 of participants.

22 (2) A delegate selected under subdivision (1)(b) of this
23 section has one vote subject to subsection (3) of this section.

24 (3) The articles of organization or bylaws may provide
25 additional voting power be allocated to each district, group,

1 or class or delegate for the aggregate of the number of patron
2 participants in each district, group, or class as provided under
3 section 42 of this act.

4 Sec. 45. A participant's interest:

5 (1) Consists of: (a) Governance rights under allocation
6 and distributions; (b) financial rights; and (c) the right or
7 obligation, if any, to do business with the limited cooperative
8 association;

9 (2) Is personal property; and

10 (3) May be in certificated or uncertificated form.

11 Sec. 46. (1) Subject to subsection (2) of this section,
12 participant interests shall be patron participant interests.

13 (2) The articles of organization or bylaws may establish
14 investor participant interests.

15 Sec. 47. (1) Unless otherwise provided in the articles
16 of organization or bylaws and subject to subsection (2) of this
17 section, participant interests are not transferable. The terms
18 of the restriction on transferability shall be set forth in the
19 limited cooperative association articles of organization or bylaws,
20 the participant records of the limited cooperative association,
21 and shall be conspicuously noted on any certificates evidencing a
22 participant's interest.

23 (2) A participant may transfer its financial rights
24 in the limited cooperative association unless the transfer is
25 restricted or prohibited by the articles of organization or bylaws.

1 (3) The transferee of a participant's financial rights
2 has, to the extent transferred, the right to share in the
3 allocation of surplus, profits, or losses and to receive the
4 distributions to the participant transferring the interest.

5 (4) The transferee does not become a participant upon
6 transfer of a participant's financial rights unless it is admitted
7 as a participant by the limited cooperative association.

8 (5) An limited cooperative association need not give
9 effect to a transfer under this section until the limited
10 cooperative association has notice of the transfer.

11 (6) A transfer of a participant's financial rights in
12 violation of a restriction or prohibition on transfer contained in
13 the articles of organization or bylaws is void.

14 Sec. 48. (1) An investor participant or transferee may
15 grant a security interest in financial rights or governance rights
16 in a limited cooperative association, but not in the governance
17 rights.

18 (2) A patron participant shall not grant a security
19 interest in financial rights or governance rights in a limited
20 cooperative association.

21 (3) The granting of a security interest in financial
22 rights is not considered a transfer for purposes of section 47
23 of this act. Upon foreclosure of a security interest in financial
24 rights a person obtaining the financial rights shall only obtain
25 financial rights subject to the security interest and shall not

1 obtain any governance rights or other rights with respect to the
2 limited cooperative association.

3 (4) The limitation of this section to financial rights
4 shall not apply in the case of a participant interest that is
5 not subject to a restriction or prohibition on transfer under the
6 articles of organization or bylaws.

7 Sec. 49. Unless otherwise provided by articles of
8 organization or bylaws, a limited cooperative association may
9 contract with another party, who need not be a patron participant,
10 requiring the other party to:

11 (1) Sell or deliver for sale or marketing on the person's
12 behalf a specified portion of the other party's agricultural
13 product or specified commodity exclusively to or through the
14 limited cooperative association or any facilities furnished by
15 the limited cooperative association or authorize the limited
16 cooperative association to act for the party in any manner with
17 respect to the product; and

18 (2) Buy or procure from or through the limited
19 cooperative association or any facilities furnished by the limited
20 cooperative association all or a specified part of the goods or
21 services to be bought or procured by the party or authorize the
22 limited cooperative association to act for the party in any manner
23 in the procurement of goods or the performance of services.

24 Sec. 50. (1) The contract may provide for sale of
25 the product or commodity to the limited cooperative association,

1 and, if so, the sale transfers title absolutely to the limited
2 cooperative association except for security interests properly
3 perfected under other law, upon delivery, or at any other specific
4 time expressly provided by the contract.

5 (2) The contract may authorize the limited cooperative
6 association to grant a security interest in the product or
7 commodity delivered and may provide that the limited cooperative
8 association may sell the product or commodity delivered and pay or
9 distribute the sales price on a pooled or other basis to the other
10 party after deducting the following:

11 (a) Selling, processing, overhead, and other costs and
12 expenses; and

13 (b) Reserves for the purposes set forth in subdivision
14 (3)(b) of section 80 of this act.

15 Sec. 51. A single term of a contract shall not exceed ten
16 years, but may be renewable for additional periods not exceeding
17 five years each, subject to the right of either party not to renew
18 by giving record notice during a period of the current term as
19 specified in the contract.

20 Sec. 52. (1) The contract or articles of organization or
21 bylaws may establish a specific sum of money as liquidated damages
22 to be paid by a patron participant to the limited cooperative
23 association. The damages may be a percentage of the value of
24 a specific amount per unit of the products, goods, or services
25 involved by the breach or a fixed sum of money.

1 (2) If there is a breach or threatened breach of a
2 contract, the limited cooperative association is entitled to an
3 injunction to prevent the breach and continuing breach and to
4 a judgment of specific performance. Pending adjudication of the
5 action, and upon filing sufficient bond, the limited cooperative
6 association is entitled to a temporary restraining order and a
7 preliminary injunction.

8 (3) Nothing in this section shall restrict a limited
9 cooperative association from seeking any other remedy at law or
10 equity in the enforcement of a marketing contract.

11 Sec. 53. (1) A limited cooperative association shall have
12 a board of directors consisting of three or more directors as set
13 forth in the articles of organization or bylaws unless the number
14 of participants is less than three. If there are fewer than three
15 participants, the number of directors shall not be less than the
16 number of participants in the limited cooperative association.

17 (2) The affairs of the limited cooperative association
18 shall be managed by, or under the direction of, the board of
19 directors.

20 (3) A director does not have agency authority on behalf
21 of the limited cooperative association solely by being a director.

22 Sec. 54. An obligation of a limited cooperative
23 association, whether arising in contract, tort, or otherwise, is
24 not the obligation of a director. A director is not personally
25 liable, directly or indirectly, by way of contribution or

1 otherwise, for an obligation of the limited cooperative association
2 solely by reason of being a director.

3 Sec. 55. (1) A director shall be an individual or
4 individual representative of a participant that is not an
5 individual.

6 (2) The articles of organization or bylaws may provide
7 for qualification of directors subject to this section.

8 (3) Except as otherwise provided in the articles of
9 organization or bylaws and subject to subsections (4) and (5) of
10 this section, each director shall be a participant of the limited
11 cooperative association or a designee of a participant that is not
12 an individual.

13 (4) Unless otherwise provided in the articles of
14 organization or bylaws, a director shall be an officer or employee
15 of the limited cooperative association.

16 (5) If the limited cooperative association is permitted
17 to have nonparticipant directors by its articles of organization or
18 bylaws, the number of nonparticipant directors shall not exceed:

19 (a) One director, if there are two, three, or four
20 directors; and

21 (b) One-fifth of the total number of directors, if there
22 are five or more directors.

23 Sec. 56. (1) At least fifty percent of the board of
24 directors of a limited cooperative association shall be elected
25 exclusively by patron participants.

1 (2) The articles of organization may provide for the
2 election of all or a specified number of directors by the holders
3 of one or more groups of classes of participants' interests.

4 (3) The articles of organization or bylaws may provide
5 for the nomination or election of directors by geographic district
6 directly or by district delegates.

7 (4) Cumulative voting is prohibited unless otherwise
8 provided in the articles of organization or bylaws.

9 (5) Except as otherwise provided by the articles of
10 organization, bylaws, or section 62 of this act, participant
11 directors shall be elected at an annual participants' meeting.

12 (6) Nonparticipant directors shall be elected in the same
13 manner as participant directors unless the articles of organization
14 or bylaws provide for a different method of selection.

15 Sec. 57. (1) A director's term expires at the annual
16 participants' meeting following the director's election unless
17 otherwise provided in the articles of organization or bylaws. The
18 term of a director shall not exceed three years.

19 (2) Unless otherwise provided in the articles of
20 organization or bylaws, a director may be reelected for subsequent
21 terms.

22 (3) A director continues to serve as director until a
23 successor director is elected and qualified or until the director
24 is removed, resigns, or dies.

25 Sec. 58. (1) A director may resign at any time by giving

1 notice in a record to the limited cooperative association.

2 (2) A resignation is effective when notice is received
3 by the limited cooperative association unless the notice states a
4 later effective date.

5 Sec. 59. The participants may remove a director only for
6 cause unless the articles of organization or bylaws provide for
7 removal without cause.

8 Sec. 60. (1) The board of directors may suspend a
9 director, if, considering the director's course of conduct and
10 the inadequacy of other available remedies, immediate suspension
11 is necessary for the best interests of the limited cooperative
12 association and the director is engaged in:

13 (a) Fraudulent conduct with respect to the limited
14 cooperative association or its participants;

15 (b) Gross abuse of the position of the director; or

16 (c) Intentional infliction of harm on the limited
17 cooperative association.

18 (2) After suspension, a director may be removed pursuant
19 to section 59 of this act.

20 Sec. 61. (1) Unless the articles of organization or
21 bylaws otherwise provide, a vacancy on the board of directors shall
22 be filled:

23 (a) By majority vote of the remaining directors until the
24 next annual participants' meeting or special participants' meeting
25 held for that purpose; and

1 (b) For the unexpired term by participants at the
2 next annual participants' meeting or special participants' meeting
3 called for that purpose.

4 (2) If the vacating director was elected by a group or
5 class of participants or by group, class, or district:

6 (a) The appointed director shall be of that group, class,
7 or district; and

8 (b) The election of the director for the unexpired term
9 shall be conducted in the same manner as would the election for
10 that position without a vacancy.

11 Sec. 62. Unless the articles of organization or bylaws
12 otherwise provide, the board of directors may fix the remuneration
13 of directors and nondirector committee participants.

14 Sec. 63. (1) The board of directors shall meet at least
15 annually and may hold meetings in or outside this state.

16 (2) Unless otherwise provided in the articles of
17 organization or bylaws, the board of directors may permit directors
18 to attend board meetings or conduct board meetings through the
19 use of any means of communication, if all directors attending the
20 meeting can communicate with each other during the meeting.

21 Sec. 64. (1) Unless prohibited by the articles of
22 organization or bylaws, any action that may be taken by the
23 board of directors may be taken without a meeting if each director
24 consents to action in a record.

25 (2) Consent under subsection (1) of this section may be

1 withdrawn by a director in a record at any time before the limited
2 cooperative association receives a record of consent from each
3 director.

4 (3) The record of consent for any action may specify the
5 effective date or time of the action.

6 Sec. 65. (1) Unless otherwise provided by the articles of
7 organization or bylaws, the board of directors may establish a time
8 and place for regular board meetings and notice of the time, place,
9 or purpose of those meetings is not required.

10 (2) Unless otherwise provided by the articles of
11 organization or bylaws, special meetings of the board of directors
12 shall be preceded by at least three days' notice of the time, date,
13 and place of the meeting. The notice shall contain a statement of
14 the purpose of the special meeting and the meeting shall be limited
15 to the matters contained in the statement.

16 Sec. 66. (1) Unless otherwise provided in the articles of
17 organization or bylaws, a director may waive any required notice of
18 a meeting of the board of directors in a record before, during, or
19 after the meeting.

20 (2) Unless otherwise provided in the articles of
21 organization or bylaws, a director's participation in a meeting is
22 waiver of notice of that meeting, unless the director objects to
23 the meeting at the beginning of the meeting or promptly upon the
24 director's arrival at the meeting and does not thereafter vote for
25 or assent to action taken at the meeting.

1 Sec. 67. (1) Unless otherwise provided in the articles of
2 organization or bylaws, a majority of the fixed number of directors
3 on the board of directors constitutes a quorum for the management
4 of the affairs of the limited cooperative association.

5 (2) If a quorum is in attendance at the beginning of
6 the meeting, any action taken by the board of directors present
7 is valid even if the withdrawal of directors originally present
8 results in the number of directors being less than the number
9 required for a quorum.

10 Sec. 68. Each director has one vote for purposes of
11 decisions made by the board of directors.

12 Sec. 69. (1) Unless otherwise provided by the articles
13 of organization or bylaws, a board of directors may create one or
14 more committees and appoint one or more individuals to serve on a
15 committee.

16 (2) Unless otherwise provided by the articles of
17 organization or bylaws, an individual appointed to serve on
18 committees need not be a director or participant of the limited
19 cooperative association. An individual serving on a committee has
20 the same rights, duties, and obligations as a director serving on
21 a committee.

22 (3) Unless otherwise provided by the articles of
23 organization or bylaws, each committee may exercise the powers as
24 delegated by the board of directors except that no committee may:

25 (a) Approve allocations or distributions except according

1 to a formula or method prescribed by the board of directors;

2 (b) Approve or propose to participants action requiring
3 approval of participants; or

4 (c) Fill vacancies on the board of directors or any of
5 its committees.

6 Sec. 70. (1) A director shall discharge his or her duties
7 as a director, including his or her duties as a member of a
8 committee:

9 (a) In good faith;

10 (b) With the care an ordinarily prudent person in a like
11 position would exercise under similar circumstances; and

12 (c) In a manner he or she reasonably believes to be in
13 the best interests of the corporation.

14 (2) In discharging his or her duties, a director
15 shall be entitled to rely on information, opinions, reports,
16 or statements, including financial statements and other financial
17 data, if prepared or presented by:

18 (a) One or more officers or employees of the corporation
19 whom the director reasonably believes to be reliable and competent
20 in the matters presented;

21 (b) Legal counsel, public accountants, or other persons
22 as to matters the director reasonably believes are within the
23 person's professional or expert competence; or

24 (c) A committee of the board of directors of which he
25 or she is not a member, if the director reasonably believes the

1 committee merits confidence.

2 (3) A director shall not be considered to be acting in
3 good faith if he or she has knowledge concerning the matter in
4 question that makes reliance otherwise permitted by subsection (2)
5 of this section unwarranted.

6 (4) A director shall not be liable for any action taken
7 as a director or any failure to take any action if he or she
8 performed the duties of his or her office in compliance with this
9 section.

10 Sec. 71. Except as otherwise provided in section 70
11 of this act, the Business Corporation Act governs conflicts of
12 interests between a director or participant of a committee of the
13 board of directors and the limited cooperative association.

14 Sec. 72. A director may obtain, inspect, and copy
15 all information regarding the state of activities and financial
16 condition of the limited cooperative association and other
17 information regarding the activities of the limited cooperative
18 association reasonably related to the performance of the director's
19 duties as director but not for any other purpose or in any manner
20 that would violate any duty to the limited cooperative association.

21 Sec. 73. Unless otherwise provided in the articles of
22 organization or bylaws, a director, in determining the best
23 interests of the limited cooperative association, may consider
24 the interests of employees, customers, and suppliers of the
25 limited cooperative association and of the communities in which

1 the limited cooperative association operates and the long-term and
2 short-term interests of the limited cooperative association and its
3 participants.

4 Sec. 74. (1) A limited cooperative association has the
5 offices provided in its articles of organization or bylaws or
6 established by the board of directors consistent with the articles
7 of organization or bylaws.

8 (2) The articles of organization or bylaws or the board
9 of directors shall designate one of the officers for preparing all
10 records required by section 10 of this act for the authentication
11 of records.

12 (3) Officers have the authority and perform the duties
13 as the articles of organization or bylaws prescribe or as the
14 board of directors determines is consistent with the articles of
15 organization or bylaws.

16 (4) The election or appointment of an officer does not of
17 itself create a contract with the officer.

18 (5) Unless otherwise provided in the articles of
19 organization or bylaws an individual may simultaneously hold more
20 than one office in the limited cooperative association.

21 Sec. 75. (1) The board of directors may remove an officer
22 at any time with or without cause.

23 (2) An officer may resign at any time in a record giving
24 notice to the limited cooperative association. The resignation is
25 effective when the notice is given unless the notice specifies a

1 later time.

2 Sec. 76. Indemnification of any individual who has
3 incurred liability, is a party, or is threatened to be made a
4 party because of the performance of duties to, or activity on
5 behalf of, the limited cooperative association is governed by the
6 Business Corporation Act.

7 Sec. 77. The articles of organization or bylaws may
8 establish the amount, manner, or method of determining any
9 participant contribution requirements for participants or may
10 authorize the board of directors to establish the manner and
11 terms of any contributions for participants.

12 Sec. 78. (1) Unless otherwise provided in the articles
13 of organization or bylaws, the contributions of a participant
14 may consist of tangible or intangible property or other benefit
15 to the limited cooperative association, including money, services
16 performed or to be performed, promissory notes, other agreements to
17 contribute cash or property, and contracts to be performed.

18 (2) The receipt and acceptance of contributions and
19 the valuation of contributions shall be reflected in the limited
20 cooperative association's required records pursuant to section 10
21 of this act.

22 (3) Unless otherwise provided in the articles of
23 organization or bylaws, the board of directors shall value the
24 contributions received or to be received. The determination by
25 the board of directors on valuation is conclusive for purposes of

1 determining whether the participant's contribution obligation has
2 been fully paid.

3 Sec. 79. (1) A contribution agreement entered into before
4 formation of the limited cooperative association is irrevocable for
5 six months unless:

6 (a) Otherwise provided by the agreement; or

7 (b) All parties to the agreement consent to the
8 revocation.

9 (2) Upon default by a party to a contribution agreement
10 entered into before formation, the limited cooperative association,
11 once formed, may:

12 (a) Collect the amount owed as any other debt; or

13 (b) Unless otherwise provided in the agreement, rescind
14 the agreement if the debt remains unpaid more than twenty days
15 after the limited cooperative association demands payment from the
16 party in a record.

17 Sec. 80. (1) Subject to subsection (2) of this section,
18 the articles of organization or bylaws shall provide for the
19 allocation of net proceeds, savings, margins, profits, and losses
20 between classes or groups of participants.

21 (2) Unless the articles of organization or bylaws
22 otherwise provide, patron participants shall be allocated at least
23 fifty percent of the net proceeds, savings, margins, profits, and
24 losses in any fiscal year. The articles of organization or bylaws
25 shall not reduce the percentage allocated to patron participants to

1 less than fifteen percent of the net proceeds.

2 (3) Unless otherwise provided in the articles of
3 organization or bylaws, in order to determine the amount of net
4 proceeds, savings, margins, and profits, the board of directors may
5 set aside a portion of the revenue, whether or not allocated to
6 participants, after accounting for other expenses, for purposes of:

7 (a) Creating or accumulating a capital reserve; and

8 (b) Creating or accumulating reserves for specific
9 purposes, including expansion and replacement of capital assets and
10 other necessary business purposes.

11 (4) Subject to subsection (5) of this section and
12 the articles of organization or bylaws, the board of directors
13 shall allocate the amount remaining after the allocations under
14 subsections (1) through (3) of this section:

15 (a) To patron participants annually in accordance with
16 the ratio of each participants's patronage during the period to
17 total patronage of all patron participants during the period; and

18 (b) To investor participants, if any, in accordance with
19 the ratio of each investor participant's limited contribution to
20 the total initial contribution of all investor participants.

21 (5) For purposes of allocation of net proceeds, savings,
22 margins, profits, and losses to patron participants, the articles
23 of organization or bylaws may establish allocation units based on
24 function, division, district, department, allocation units, pooling
25 arrangements, participants' contributions, or other methods.

1 Sec. 81. (1) Unless otherwise provided by the articles
2 of organization or bylaws and subject to subsection (2) of this
3 section, the board of directors may authorize, and the limited
4 cooperative association may make, distributions to participants.

5 (2) Unless otherwise provided by the articles of
6 organization or bylaws, distributions to participants may be made
7 in the form of cash, capital credits, allocated patronage equities,
8 revolving fund certificates, the limited cooperative association's
9 own securities or other securities, or in any other manner.

10 Sec. 82. (1) A participant does not have a right to
11 withdraw as a participant of a limited cooperative association but
12 has the power to withdraw.

13 (2) Unless otherwise provided by the articles of
14 organization or bylaws, a participant is dissociated from a limited
15 cooperative association upon the occurrence of any of the following
16 events:

17 (a) The limited cooperative association's having notice
18 in a record of the person's express will to withdraw as a
19 participant or to withdraw on a later date specified by the person;

20 (b) An event provided in the articles of organization or
21 bylaws as causing the person's dissociation as a participant;

22 (c) The person's expulsion as a participant pursuant to
23 the articles of organization or bylaws;

24 (d) The person's expulsion as a participant by the board
25 of directors if:

1 (i) It is unlawful to carry on the limited cooperative
2 association's activities with the person as a participant;

3 (ii) Subject to section 47 of this act, there has been
4 a transfer of all of the person's financial rights in the limited
5 cooperative association;

6 (iii) The person is a corporation or association whether
7 or not organized under the Nebraska Limited Cooperative Association
8 Act, and:

9 (A) The association notifies the person that it will be
10 expelled as a participant because it has filed a public document of
11 dissolution, it has been administratively or judicially dissolved,
12 its charter has been revoked, or its right to conduct business has
13 been suspended by the jurisdiction of its organization; and

14 (B) Within ninety days after the person receives
15 the notification described in subdivision (2)(d)(iii)(A) of
16 this subsection, there is no revocation of the certificate of
17 dissolution or no reinstatement of its charter or its right to
18 conduct business; or

19 (iv) The person is a limited liability company,
20 association, whether or not organized under the act, or partnership
21 that has been dissolved and whose business is being wound up;

22 (e) In the case of a person who is an individual, the
23 person's death;

24 (f) In the case of a person that is a trust, distribution
25 of the trust's entire financial rights in the limited cooperative

1 association, but not merely by the substitution of a successor
2 trustee;

3 (g) In the case of a person that is an estate,
4 distribution of the estate's entire financial interest in the
5 limited cooperative association, but not merely by the substitution
6 of a successor personal representative;

7 (h) Termination of a participant that is not an
8 individual, partnership, limited liability company, limited
9 cooperative association, whether or not organized under the act,
10 corporation, trust, or estate; or

11 (i) The limited cooperative association's participation
12 in a consolidation or merger, if, under the plan of merger as
13 approved under section 122 of this act, the person ceases to be a
14 participant.

15 Sec. 83. (1) Upon a person's dissociation as a
16 participant:

17 (a) A person dissociated pursuant to section 82 of this
18 act does not have further rights as a participant; and

19 (b) Subject to sections 47 and 48 of this act, any
20 financial rights owned by the person in the person's capacity
21 as a participant immediately before dissociation is owned by the
22 person as a transferee who is not admitted as a participant after
23 dissociation.

24 (2) A person's dissociation as a participant does not
25 of itself discharge the person from any obligation to the

1 limited cooperative association which the person incurred while
2 a participant.

3 Sec. 84. Except as otherwise provided in section 87 of
4 this act, a limited cooperative association is dissolved and its
5 activities shall be wound up only upon the occurrence of any of the
6 following:

7 (1) The happening of an event or the coming of a time
8 specified in the articles of organization;

9 (2) The action of the organizers, board of directors, or
10 participants under sections 86 and 87 of this act;

11 (3) The passage of ninety days after the dissociation
12 of a participant, resulting in the limited cooperative association
13 having less than two participants, unless before the end of the
14 period the limited cooperative association admits at least one
15 participant in accordance with its articles of organization or
16 bylaws; or

17 (4) The filing of a declaration by the Secretary of State
18 under section 93 of this act.

19 Sec. 85. A district court may dissolve a limited
20 cooperative association or order any action that under the
21 circumstances is appropriate and equitable:

22 (1) In a proceeding by the Attorney General, if it is
23 established that:

24 (a) The limited cooperative association obtained its
25 articles of organization through fraud; or

1 (b) The limited cooperative association has continued to
2 exceed or abuse the authority conferred upon it by law;

3 (2) In a proceeding by a participant, if it is
4 established that:

5 (a) The directors are deadlocked in the management of
6 the limited cooperative association affairs, the participants are
7 unable to break the deadlock, and irreparable injury to the limited
8 cooperative association is occurring or is threatened because of
9 the deadlock;

10 (b) The directors or those in control of the limited
11 cooperative association have acted, are acting, or will act in a
12 manner that is illegal, oppressive, or fraudulent;

13 (c) The participants are deadlocked in voting power and
14 have failed, for a period that includes at least two consecutive
15 annual participants' meetings, to elect successors to directors
16 whose terms have expired; or

17 (d) The assets of the limited cooperative association are
18 being misapplied or wasted; or

19 (3) In a proceeding by the limited cooperative
20 association to have its voluntary dissolution continued under
21 judicial supervision.

22 Sec. 86. A majority of the organizers or initial
23 directors of a limited cooperative association that has not yet
24 begun activity or the conduct of its affairs may dissolve the
25 limited cooperative association.

1 Sec. 87. In order to voluntarily dissolve:

2 (1) A resolution to dissolve shall be approved by a
3 majority vote of the board of directors unless a greater vote is
4 required by the articles of organization or bylaws;

5 (2) The board of directors shall mail or otherwise
6 transmit or deliver a record to each participant:

7 (a) The resolution required by subdivision (1) of this
8 section;

9 (b) A recommendation that the participants vote in favor
10 of the resolution, unless the board determines because of conflict
11 of interest or other special circumstances it should not make such
12 a recommendation;

13 (c) If the board makes no recommendation, the basis of
14 that decision; and

15 (d) A notice of the meeting in the same manner as a
16 special participants' meeting;

17 (3) Subject to section 39 of this act, the resolution to
18 dissolve shall be approved by at least a two-thirds vote of patron
19 participants voting at the meeting and at least two-thirds vote of
20 investor participants voting at the meeting; and

21 (4) Unless otherwise provided in the resolution, the
22 limited cooperative association is dissolved upon approval under
23 subdivision (3) of this section.

24 Sec. 88. (1) A limited cooperative association continues
25 after dissolution only for purposes of winding up its activities.

1 (2) In winding up its activities, the limited cooperative
2 association:

3 (a) Shall discharge its liabilities, settle and close its
4 activities, and marshal and distribute its assets; and

5 (b) File a statement of dissolution indicating it is
6 winding up, preserve the limited cooperative association or its
7 property as a going concern for a reasonable time, prosecute
8 and defend actions and proceedings, transfer limited cooperative
9 association property, settle disputes by mediation or arbitration,
10 and perform other necessary acts.

11 (3) On the application of the limited cooperative
12 association, any participant, or a holder of financial rights the
13 district court may order judicial supervision of the winding up,
14 including the appointment of a person to wind up the dissolved
15 limited cooperative association's activities, if:

16 (a) After a reasonable time, the limited cooperative
17 association has not executed winding up under subdivision (2) of
18 this subsection; or

19 (b) The applicant establishes other good cause.

20 Sec. 89. (1) In winding up a limited cooperative
21 association's business, unless otherwise stated in the articles
22 of organization or bylaws, the assets of the limited cooperative
23 association shall be applied to discharge its obligations
24 to creditors, including participants who are creditors. Any
25 remaining assets shall be applied to pay in money the net amount

1 distributable to participants in accordance with their right to
2 distributions under subsection (2) of this section.

3 (2) Each participant is entitled to a distribution from
4 the limited cooperative association of any remaining assets in the
5 proportion of the participant's financial interests to the total
6 financial interests of participants of the limited cooperative
7 association after all other obligations are satisfied.

8 Sec. 90. (1) A dissolved limited cooperative association
9 may dispose of the known claims against it by following the
10 procedure described in subsection (2) of this section.

11 (2) A dissolved limited cooperative association may
12 notify its known claimants of the dissolution in a record. The
13 notice shall:

14 (a) Specify the information required to be included in a
15 claim;

16 (b) Provide a mailing address to which the claim is to be
17 sent;

18 (c) State the deadline for receipt of the claim, which
19 may not be less than one hundred twenty days after the date the
20 notice is received by the claimant; and

21 (d) State that the claim will be barred if not received
22 by the deadline.

23 (3) A claim against a dissolved limited cooperative
24 association is barred if the requirements of subsection (2) of this
25 section are met and:

1 (a) The limited cooperative association has not been
2 notified in a record of the claim; or

3 (b) In the case of a claim that is timely received
4 but rejected by the dissolved limited cooperative association, the
5 claimant does not commence an action to enforce the claim against
6 the limited cooperative association within ninety days after the
7 receipt of the notice of the rejection, if the notice of rejection
8 states that the claim will be barred unless brought against the
9 limited cooperative association within ninety days after receipt of
10 the notice of rejection.

11 (4) This section does not apply to a claim based on an
12 event occurring after the date of dissolution or a liability that
13 is contingent on that date.

14 Sec. 91. (1) A dissolved limited cooperative association
15 shall publish notice of its dissolution and request persons having
16 claims against the limited cooperative association to present them
17 in accordance with the notice.

18 (2) The notice shall:

19 (a) Be published at least once in a newspaper of
20 general circulation in the county in which the dissolved limited
21 cooperative association's principal office is located or, if it has
22 none in this state, in the county in which the limited cooperative
23 association's designated office is or was last located;

24 (b) Describe the information required to be contained in
25 a claim and provide a mailing address to which the claim is to be

1 sent; and

2 (c) State that a claim against the limited cooperative
3 association is barred unless an action to enforce the claim is
4 commenced within three years after publication of the notice.

5 (3) If a dissolved limited cooperative association
6 publishes a notice in accordance with subsection (2) of this
7 section, the claim of each of the following claimants is barred,
8 unless the claimant commences an action to enforce the claim
9 against the dissolved limited cooperative association within three
10 years after the publication date of the notice:

11 (a) A claimant that did not receive notice in a record
12 under section 90 of this act;

13 (b) A claimant whose claim was timely sent to the
14 dissolved limited cooperative association but not acted on; and

15 (c) A claimant whose claim is contingent or based on an
16 event occurring after the effective date of dissolution.

17 (4) A claim not barred under this section may be
18 enforced:

19 (a) Against the dissolved limited cooperative
20 association, to the extent of its undistributed assets;
21 or

22 (b) If the assets have been distributed in liquidation,
23 against a participant or transferee of financial rights to the
24 extent of that person's proportionate share of the claim or
25 the limited cooperative association's assets distributed to the

1 participant or transferee in liquidation, whichever is less, but a
2 person's total liability for all claims under this subsection does
3 not exceed the total amount of assets distributed to the person
4 as part of the winding up of the dissolved limited cooperative
5 association.

6 Sec. 92. (1) A dissolved limited cooperative association
7 that has published a notice under section 90 or 91 of this act
8 may file an application with the district court where the dissolved
9 limited cooperative association's principal office is located for a
10 determination of the amount and form of security to be provided for
11 payment of claims that are contingent or have not been made known
12 to the dissolved limited cooperative association or that are based
13 on an event occurring after the effective date of dissolution but
14 that, based on the facts known to the dissolved limited cooperative
15 association, are reasonably estimated to arise after the effective
16 date of dissolution.

17 (2) Notice of the proceeding shall be given by the
18 dissolved limited cooperative association to each known claimant
19 holding a contingent claim within ten days after the filing of the
20 application of the limited cooperative association.

21 (3) The court may appoint a receiver to represent all
22 claimants whose identities are unknown in any proceeding brought
23 under this section. The reasonable fees and expenses of such
24 receiver, including all reasonable expert witness fees, shall be
25 paid by the dissolved limited cooperative association.

1 (4) Provision by the dissolved limited cooperative
2 association for security in the amount and the form ordered by the
3 court under section 91 of this act shall satisfy the dissolved
4 limited cooperative association's obligations with respect to
5 claims that are contingent, have not been made known to the
6 dissolved limited cooperative association, or are based on an
7 event occurring after the effective date of dissolution, and such
8 claims may not be enforced against a participant who received a
9 distribution.

10 Sec. 93. (1) The Secretary of State may dissolve a
11 limited cooperative association administratively if the limited
12 cooperative association does not, within sixty days after the due
13 date:

14 (a) Pay any fee, tax, or penalty due to the Secretary
15 of State under the Nebraska Limited Cooperative Association Act or
16 other law; or

17 (b) Deliver its annual report to the Secretary of State.

18 (2) If the Secretary of State determines that a ground
19 exists for administratively dissolving a limited cooperative
20 association, the Secretary of State shall file a record of the
21 determination and serve the limited cooperative association with a
22 copy of the filed record.

23 (3) If, within sixty days after service of the copy, the
24 limited cooperative association does not correct each ground for
25 dissolution or demonstrate to the reasonable satisfaction of the

1 Secretary of State that each uncorrected ground determined by the
2 Secretary of State does not exist, the Secretary of State shall
3 administratively dissolve the limited cooperative association by
4 preparing, signing, and filing a declaration of dissolution that
5 states the grounds for dissolution. The Secretary of State shall
6 serve the limited cooperative association with a copy of the filed
7 declaration.

8 (4) An limited cooperative association administratively
9 dissolved continues its existence but may carry on only activities
10 necessary to wind up its activities and liquidate its assets under
11 sections 88 and 89 of this act and to notify claimants under
12 sections 90 and 91 of this act.

13 (5) The administrative dissolution of a limited
14 cooperative association does not terminate the authority of its
15 agent for service of process.

16 Sec. 94. (1) An limited cooperative association that has
17 been administratively dissolved may apply to the Secretary of State
18 for reinstatement within two years after the effective date of
19 dissolution. The application shall be delivered to the Secretary of
20 State for filing and state:

21 (a) The name of the limited cooperative association and
22 the effective date of its administrative dissolution;

23 (b) That the grounds for dissolution either did not exist
24 or have been eliminated; and

25 (c) That the limited cooperative association's name

1 satisfies the requirements of sections 6 to 8 of this act.

2 (2) If the Secretary of State determines that an
3 application contains the information required by subsection (a)
4 of this section and that the information is correct, the Secretary
5 of State shall:

6 (a) Prepare a declaration of reinstatement that states
7 this determination;

8 (b) Sign and file the original of the declaration of
9 reinstatement; and

10 (c) Serve the limited cooperative association with a
11 copy.

12 (3) When reinstatement becomes effective it relates back
13 to and takes effect as of the effective date of the administrative
14 dissolution and the limited cooperative association may resume or
15 continue its activities as if the administrative dissolution had
16 never occurred.

17 Sec. 95. (1) If the Secretary of State denies a limited
18 cooperative association's application for reinstatement following
19 administrative dissolution, the Secretary of State shall prepare,
20 sign, and file a notice that explains the reason or reasons for
21 denial and serve the limited cooperative association with a copy of
22 the notice.

23 (2) Within thirty days after service of the notice of
24 denial, the limited cooperative association may appeal the denial
25 of restatement by petitioning the district court to set aside the

1 dissolution. The petition shall be served on the Secretary of State
2 and contain a copy of the Secretary of State's declaration of
3 dissolution, the limited cooperative association's application for
4 reinstatement, and the Secretary of State's notice of denial.

5 (3) The court may summarily order the Secretary of State
6 to reinstate the dissolved limited cooperative association or may
7 take other action the court considers appropriate.

8 Sec. 96. (1) A limited cooperative association that has
9 dissolved or is about to dissolve may deliver to the Secretary of
10 State for filing a statement of dissolution that states:

11 (a) The name of the limited cooperative association;

12 (b) The date that the limited cooperative association
13 dissolved or when it will dissolve; and

14 (c) Any other information it deems relevant.

15 (2) A person has notice of a limited cooperative
16 association's dissolution the later of ninety days after the
17 filing of the statement or the effective date under subdivision
18 (1)(b) of this section.

19 Sec. 97. (1) Subject to subsection (2) of this section,
20 a participant may maintain a direct action against the limited
21 cooperative association, an officer, or a director to enforce the
22 rights and otherwise protect the interests of the participant,
23 including rights and interests under the articles of organization
24 or bylaws.

25 (2) A participant maintaining a direct action under this

1 section is required to plead and prove an actual or threatened
2 injury that is not solely the result of an injury suffered or
3 threatened to be suffered by the limited cooperative association.

4 Sec. 98. A participant may maintain a derivative action
5 to enforce a right of a limited cooperative association, if the
6 participant adequately represents the interests of the limited
7 cooperative and if:

8 (1) The participant first makes a demand on the limited
9 cooperative association, requesting that it bring an action to
10 enforce the right, and the limited cooperative association does not
11 bring the action within a reasonable time; and

12 (2) Ninety days have expired after the date the demand
13 was made unless the participant has earlier been notified that the
14 demand has been rejected by the limited cooperative association or
15 unless irreparable injury to the limited cooperative association
16 would result by waiting for the expiration of the time.

17 Sec. 99. A derivative action may be maintained only by a
18 person that is a participant at the time the action is commenced
19 and:

20 (1) That was a participant when the conduct giving rise
21 to the action occurred; or

22 (2) Whose status as a participant devolved upon the
23 person by operation of law from a person that was a participant at
24 the time of the conduct.

25 Sec. 100. In a derivative action, the complaint shall

1 state with particularity:

2 (1) The date and content of the plaintiff's demand and
3 the limited cooperative association's response to the demand; and

4 (2) If ninety days have not expired under subdivision (2)
5 of section 98 of this act, that irreparable injury to the limited
6 cooperative association would result by waiting for the expiration
7 of the time.

8 Sec. 101. (1) Except as otherwise provided in subsection
9 (2) of this section:

10 (a) Any proceeds or other benefits of a derivative
11 action, whether by judgment, compromise, or settlement, belong
12 to the limited cooperative association and not to the derivative
13 plaintiff; and

14 (b) If the derivative plaintiff receives any proceeds,
15 the derivative plaintiff shall immediately remit them to the
16 limited cooperative association.

17 (2) If a derivative action is successful, in whole or
18 in part, the court may award the plaintiff reasonable expenses,
19 including reasonable attorney's fees, from the recovery of the
20 limited cooperative association.

21 Sec. 102. (1) The laws of the state or other jurisdiction
22 under which a foreign limited cooperative association is organized
23 govern relations among the participants of the foreign limited
24 cooperative association and between the participants and the
25 foreign limited cooperative association.

1 (2) A foreign limited cooperative association shall not
2 be denied a certificate of authority by reason of any difference
3 between the laws of the jurisdiction under which the foreign
4 limited cooperative association is organized and the laws of this
5 state.

6 (3) A certificate of authority does not authorize a
7 foreign limited cooperative association to engage in any activity
8 or exercise any power that a limited cooperative association cannot
9 engage in or exercise in this state.

10 Sec. 103. (1) A foreign limited cooperative association
11 may apply for a certificate of authority to transact business in
12 this state by delivering an application to the Secretary of State
13 for filing. The application shall state:

14 (a) The name of the foreign limited cooperative
15 association and, if the name does not comply with section 8 of
16 this act, an alternative name adopted pursuant to section 106 of
17 this act;

18 (b) The name of the state or other jurisdiction under
19 whose law the foreign limited cooperative is organized;

20 (c) The street and mailing addresses of the foreign
21 limited cooperative association's designated office and, if
22 the laws of the jurisdiction under which the foreign limited
23 cooperative association is organized require the foreign limited
24 cooperative association to maintain an office in that jurisdiction,
25 the street and mailing addresses of the required office;

1 (d) The name and street and mailing addresses of the
2 foreign limited cooperative association's agent for service of
3 process in this state; and

4 (e) The name and street and mailing addresses of each of
5 the foreign limited cooperative association's current directors and
6 officers.

7 (2) A foreign limited cooperative association shall
8 deliver with the completed application a certificate of good
9 standing or existence or a similar record signed by the Secretary
10 of State or other official having custody of the foreign limited
11 cooperative association's publicly filed records in the state or
12 other jurisdiction under whose law the foreign limited cooperative
13 association is organized.

14 Sec. 104. (1) Activities of a foreign limited cooperative
15 association which do not constitute transacting business in this
16 state within the meaning of this section include:

17 (a) Maintaining, defending, and settling an action or
18 proceeding;

19 (b) Holding meetings of its participants or carrying on
20 any other activity concerning its internal affairs;

21 (c) Maintaining accounts in financial institutions;

22 (d) Maintaining offices or agencies for the transfer,
23 exchange, and registration of the foreign limited cooperative
24 association's own securities or maintaining trustees or
25 depositories with respect to those securities;

1 (e) Selling through independent contractors;

2 (f) Soliciting or obtaining orders, whether by mail or
3 electronic means or through employees or agents or otherwise, if
4 the orders require acceptance outside this state before they become
5 contracts;

6 (g) Creating or acquiring indebtedness, mortgages, or
7 security interests in real or personal property;

8 (h) Securing or collecting debts or enforcing mortgages
9 or other security interests in property securing the debts, and
10 holding, protecting, and maintaining property so acquired;

11 (i) Conducting an isolated transaction that is completed
12 within thirty days and is not one in the course of similar
13 transactions of a like manner; and

14 (j) Transacting business in interstate commerce.

15 (2) For purposes of this section, the ownership in
16 this state of income-producing real property or tangible personal
17 property, other than property excluded under subsection (1) of this
18 section, constitutes transacting business in this state.

19 (3) This section does not apply in determining the
20 contacts or activities that may subject a foreign limited
21 cooperative association to service of process, taxation, or
22 regulation under any other law of this state.

23 Sec. 105. Unless the Secretary of State determines that
24 an application for a certificate of authority does not comply
25 with the filing requirements of the Nebraska Limited Cooperative

1 Association Act, the Secretary of State, upon payment of all
2 filing fees, shall file the application, prepare, sign, and file a
3 certificate of authority to transact business in this state, and
4 send a copy of the filed certificate, together with a receipt for
5 the fees, to the foreign limited cooperative association or its
6 representative.

7 Sec. 106. (1) A foreign limited cooperative association
8 whose name does not comply with section 8 of this act shall
9 not obtain a certificate of authority until it adopts, for
10 purposes of transacting business in this state, an alternative
11 name that complies with such section. A foreign limited cooperative
12 association that adopts an alternative name under this subsection
13 and then obtains a certificate of authority with the name need
14 not comply with sections 7 and 8 of this act. After obtaining
15 a certificate of authority with an alternative name, a foreign
16 limited cooperative association shall transact business in this
17 state under the name unless the foreign limited cooperative
18 association is authorized under sections 7 and 8 of this act
19 to transact business in this state under another name.

20 (2) If a foreign limited cooperative association
21 authorized to transact business in this state changes its name
22 to one that does not comply with sections 7 and 8 of this act,
23 it shall not thereafter transact business in this state until it
24 complies with subsection (1) of this section and obtains an amended
25 certificate of authority.

1 Sec. 107. (1) A certificate of authority of a foreign
2 limited cooperative association to transact business in this state
3 may be revoked by the Secretary of State in the manner provided
4 in subsections (2) and (3) of this section if the foreign limited
5 cooperative association does not:

6 (a) Pay, within sixty days after the due date, any fee,
7 tax, or penalty due to the Secretary of State under the Nebraska
8 Limited Cooperative Association Act or other law;

9 (b) Deliver, within sixty days after the due date, its
10 annual report required under section 93 of this act;

11 (c) Appoint and maintain an agent for service of process
12 as required by section 103 of this act; or

13 (d) Deliver for filing a statement of a change under
14 section 14 of this act within thirty days after a change has
15 occurred in the name or address of the agent.

16 (2) To revoke a certificate of authority, the Secretary
17 of State shall prepare, sign, and file a notice of revocation
18 and send a copy to the foreign limited cooperative association's
19 registered agent for service of process in this state, or if
20 the foreign limited cooperative association does not appoint and
21 maintain an agent for service of process in this state, to the
22 foreign limited cooperative association's designated office. The
23 notice shall state:

24 (a) The revocation's effective date, which shall be at
25 least sixty days after the date the Secretary of State sends the

1 copy; and

2 (b) The foreign limited cooperative association's
3 noncompliance with subsection (1) of this section which is the
4 reason for the revocation.

5 (3) The authority of the foreign limited cooperative
6 association to transact business in this state ceases on the
7 effective date of the notice of revocation unless before that date
8 the foreign limited cooperative association cures each failure to
9 comply with subsection (1) of this section stated in the notice. If
10 the foreign limited cooperative association cures the failures, the
11 Secretary of State shall so indicate on the filed notice.

12 Sec. 108. (1) To cancel its certificate of authority
13 to transact business in this state, a foreign limited cooperative
14 association shall deliver to the Secretary of State for filing a
15 notice of cancellation. The certificate is canceled when the notice
16 becomes effective under section 19 of this act.

17 (2) A foreign limited cooperative association transacting
18 business in this state shall not maintain an action or proceeding
19 in this state unless it has a certificate of authority to transact
20 business in this state.

21 (3) The failure of a foreign limited cooperative
22 association to have a certificate of authority to transact business
23 in this state does not impair the validity of a contract or act
24 of the foreign limited cooperative association or prevent the
25 foreign limited cooperative association from defending an action or

1 proceeding in this state.

2 (4) A participant of a foreign limited cooperative
3 association is not liable for the obligations of the foreign
4 limited cooperative association solely by reason of the foreign
5 limited cooperative association's having transacted business in
6 this state without a certificate of authority.

7 (5) If a foreign limited cooperative association
8 transacts business in this state without a certificate of authority
9 or cancels its certificate of authority, it appoints the Secretary
10 of State as its agent for service of process for rights of action
11 arising out of the transaction of business in this state.

12 Sec. 109. The Attorney General may maintain an action to
13 restrain a foreign limited cooperative association from transacting
14 business in this state in violation of this section.

15 Sec. 110. (1) A limited cooperative association may amend
16 its articles of organization or bylaws.

17 (2) A participant of a limited cooperative association
18 does not have vested rights in any provision in the articles of
19 organization or bylaws.

20 Sec. 111. To amend its articles or organization or
21 bylaws:

22 (1) A proposed amendment shall be approved by a majority
23 vote of the board of directors unless a greater vote is required by
24 the articles of organization or bylaws; and

25 (2) The board of directors shall mail or otherwise

1 transmit or deliver in a record to each participant:

2 (a) The proposed amendment;

3 (b) A recommendation that the participants approve the
4 amendment unless the board determines because of conflict of
5 interest or other special circumstances it should not make such a
6 recommendation;

7 (c) If the board makes no recommendation, the basis of
8 that decision;

9 (d) Any condition of its submission of the amendment to
10 the participants; and

11 (e) To give notice of the meeting in the same manner as a
12 special participants' meeting.

13 Sec. 112. (1) No substantive change to the proposed
14 amendment of the articles of organization or bylaws shall be made
15 at the participants' meeting at which the vote occurs.

16 (2) Subject to subsection (1) of this section any
17 amendment of the amendment need not be separately voted upon
18 by the board of directors.

19 (3) The vote to adopt an amendment to the amendment is
20 the same as that required to pass the proposed amendment.

21 Sec. 113. (1) An amendment to the articles of
22 organization shall be approved by at least a two-thirds vote of
23 participants voting at the meeting.

24 (2) An amendment to the bylaws shall be approved by at
25 least a majority vote of participants voting at the meeting and by

1 at least a majority of investor participants voting at the meeting.

2 Sec. 114. (1) If a proposed amendment affects a group,
3 class, or district of participants in one or more of the ways
4 described in section 43 of this act, those participants shall vote
5 as a separate group.

6 (2) Unless otherwise provided in the articles of
7 organization or bylaws, if a proposed amendment affects more than
8 one group, class, or district of participants in the same or
9 a substantially similar way, the participants of those groups,
10 classes, or districts shall vote on the proposed amendment as a
11 single group.

12 (3) A group, class, or district of participants has the
13 rights provided in this section even if those participants are not
14 otherwise entitled to vote under the articles of organization or
15 bylaws.

16 Sec. 115. (1) Unless the articles of organization provide
17 otherwise, the board of directors may adopt bylaws to be effective
18 only in an emergency described in subsection (4) of this section.
19 The emergency bylaws may be amended or repealed by the participants
20 and may make all provisions necessary for managing the limited
21 cooperative association during the emergency, including:

22 (a) Procedures for calling a meeting of the board of
23 directors;

24 (b) Quorum requirements for the meeting; and

25 (c) Designation of additional or substitute directors.

1 (2) The regular bylaws consistent with the emergency
2 bylaws remain effective during the emergency. The emergency bylaws
3 are not effective after the emergency ends.

4 (3) Action taken by the limited cooperative association
5 in good faith in accordance with the emergency bylaws:

6 (a) Binds the limited cooperative association; and

7 (b) May not be used to impose liability on a director,
8 officer, employee, or agent of the limited cooperative association.

9 (4) An emergency exists for purposes of this section if
10 a quorum of the board of directors cannot readily be assembled
11 because of a catastrophic event.

12 Sec. 116. (1) To amend or restate its articles of
13 organization, a limited cooperative association shall deliver to
14 the Secretary of State for filing an amendment or restatement
15 articles of organization stating:

16 (a) The name of the limited cooperative association;

17 (b) The date of filing of its initial articles of
18 organization; and

19 (c) The changes the amendment makes to the articles of
20 organization as most recently amended or restated.

21 (2) An limited cooperative association shall promptly
22 deliver to the Secretary of State for filing an amendment to the
23 articles of organization to reflect the appointment of a person
24 to wind up the limited cooperative association's activities under
25 section 88 of this act.

1 (3) An organizer that knows that any information in a
2 filed articles of organization was false when the articles were
3 filed or has become false due to changed circumstances shall
4 promptly:

5 (a) Cause the articles to be amended; or

6 (b) If appropriate, deliver to the Secretary of State for
7 filing an amendment.

8 (4) Articles of organization may be amended at any
9 time for any other proper purpose as determined by the limited
10 cooperative association.

11 (5) Restated articles of organization may be delivered
12 to the Secretary of State for filing in the same manner as an
13 amendment.

14 (6) Subject to section 19 of this act, an amendment or
15 restated article is effective when filed by the Secretary of State.

16 Sec. 117. For purposes of sections 117 to 128 of this
17 act:

18 (1) Constituent limited cooperative association means a
19 limited cooperative association that is a party to a consolidation
20 or merger;

21 (2) Constituent organization means an organization that
22 is a party to a consolidation or merger;

23 (3) Converted organization means the organization into
24 which a converting organization converts pursuant to sections 118
25 to 121 of this act;

1 (4) Converting limited cooperative association means a
2 converting organization that is a limited cooperative association;

3 (5) Converting organization means an organization that
4 converts to another organization pursuant to section 118 of this
5 act;

6 (6) Governing statute of an organization means the
7 statute that governs the organization's internal affairs;

8 (7) Organization means a limited cooperative association,
9 limited cooperative association governed by a law other
10 than the Nebraska Limited Cooperative Association Act, a
11 general partnership, a limited liability partnership, a limited
12 partnership, a limited liability limited partnership, a limited
13 liability company, a business trust, a corporation, or any other
14 person having a governing statute. The term includes domestic and
15 foreign organizations whether or not organized for profit;

16 (8) Personal liability means personal liability for a
17 debt, liability, or other obligation of an organization which is
18 imposed on a person that co-owns, has an interest in, or is a
19 participant of the organization:

20 (a) By the organization's governing statute solely by
21 reason of co-owning, having an interest in, or being a participant
22 of the organization; or

23 (b) By the organization's organizational documents under
24 a provision of the organization's governing statute authorizing
25 those documents to make one or more specified persons liable for

1 all or for specified debts, liabilities, and other obligations of
2 the organization solely by reason of co-owning, having an interest
3 in, or being a participant of the organization; and

4 (9) Surviving organization means an organization into
5 which one or more other organizations are merged. A surviving
6 organization may exist before the merger or be created by the
7 merger.

8 Sec. 118. (1) An organization other than a limited
9 cooperative association may convert to a limited cooperative
10 association and a limited cooperative association may convert
11 to another organization pursuant to this section and a plan of
12 conversion, if:

13 (a) The other organization's governing statute authorizes
14 the conversion;

15 (b) The conversion is not prohibited by the law of the
16 jurisdiction that enacted the governing statute; and

17 (c) The other organization complies with its governing
18 statute in effecting the conversion.

19 (2) A plan of conversion shall be in a record and shall
20 include:

21 (a) The name and form of the organization before
22 conversion;

23 (b) The name and form of the organization after
24 conversion;

25 (c) The terms and conditions of the conversion, including

1 the manner and basis for converting interests in the converting
2 organization into any combination of money, interests in the
3 converted organization, and other consideration; and

4 (d) The organizational documents of the converted
5 organization.

6 Sec. 119. (1) A plan of conversion shall be consented to
7 by at least two-thirds vote of patron participants voting under
8 section 39 of this act and by at least two-thirds vote of investor
9 participants, if any, voting under section 42 of this act. If,
10 as a result of the conversion, any participant of the limited
11 cooperative association has personal liability as a result of
12 the conversion, consent of that participant in a record shall be
13 required.

14 (2) Subject to any contractual rights, after a conversion
15 is approved, and at any time before a filing is made under section
16 120 of this act, a converting limited cooperative association may
17 amend the plan or abandon the planned conversion:

18 (a) As provided in the plan; and

19 (b) Except as prohibited by the plan, by the same consent
20 as required to approve the plan.

21 Sec. 120. (1) After a plan of conversion is approved:

22 (a) A converting limited cooperative association shall
23 deliver to the Secretary of State for filing articles of
24 conversion, which shall include:

25 (i) A statement that the limited cooperative association

1 has been converted into another organization;
2 (ii) The name and form of the organization and the
3 jurisdiction of its governing statute;
4 (iii) The date the conversion is effective under the
5 governing statute of the converted organization;
6 (iv) A statement that the conversion was approved as
7 required by the Nebraska Limited Cooperative Association Act;
8 (v) A statement that the conversion was approved as
9 required by the governing statute of the converted organization;
10 and
11 (vi) If the converted organization is a foreign
12 organization not authorized to transact business in this state,
13 the street and mailing address of an office which the Secretary of
14 State may use for the purposes of section 16 of this act; and
15 (b) If the converting organization is not a converting
16 limited cooperative association, the converting organization
17 shall deliver to the Secretary of State for filing articles of
18 organization, which shall include, in addition to the information
19 required by section 16 of this act:
20 (i) A statement that the limited cooperative association
21 was converted from another organization;
22 (ii) The name and form of the organization and the
23 jurisdiction of its governing statute; and
24 (iii) A statement that the conversion was approved in a
25 manner that complied with the organization's governing statute.

1 (2) A conversion becomes effective:

2 (a) If the converted organization is a limited
3 cooperative association, when the certificate of limited
4 partnership takes effect; and

5 (b) If the converted organization is not a limited
6 cooperative association, as provided by the governing statute of
7 the converted organization.

8 Sec. 121. (1) An organization that has been converted
9 pursuant to sections 117 to 121 of this act is for all purposes the
10 same entity that existed before the conversion.

11 (2) When a conversion takes effect:

12 (a) All property owned by the converting organization
13 remains vested in the converted organization;

14 (b) All debts, liabilities, and other obligations of the
15 converting organization continue as obligations of the converted
16 organization;

17 (c) An action or proceeding pending by or against the
18 converting organization may be continued as if the conversion had
19 not occurred;

20 (d) Except as prohibited by other law, all of the rights,
21 privileges, immunities, powers, and purposes of the converting
22 organization remain vested in the converted organization;

23 (e) Except as otherwise provided in the plan of
24 conversion, the terms and conditions of the plan of conversion take
25 effect; and

1 (f) Except as otherwise agreed, the conversion does
2 not dissolve a converting limited cooperative association for the
3 purposes of section 87 of this act.

4 (3) A converted organization that is a foreign
5 organization consents to the jurisdiction of the courts of this
6 state to enforce any obligation owed by the converting limited
7 cooperative association if, before the conversion, the converting
8 limited cooperative association was subject to suit in this state
9 on the obligation. A converted organization that is a foreign
10 organization and not authorized to transact business in this state
11 appoints the Secretary of State as its agent for service of process
12 for purposes of enforcing an obligation under this subsection.
13 Service on the Secretary of State under this subsection is made
14 in the same manner and with the same consequences as in sections
15 13 and 16 of this act.

16 Sec. 122. (1) A limited cooperative association may merge
17 with one or more other constituent organizations pursuant to this
18 section and a plan of merger, if:

19 (a) The governing statute of each of the other
20 organizations authorizes the merger;

21 (b) The merger is not prohibited by the law of a
22 jurisdiction that enacted any of those governing statutes; and

23 (c) Each of the other organizations complies with its
24 governing statute in effecting the merger.

25 (2) A plan of merger shall be in a record and shall

1 include:

2 (a) The name and form of each constituent organization;

3 (b) The name and form of the surviving organization and,

4 if the surviving organization is to be created by the merger, a

5 statement to that effect;

6 (c) The terms and conditions of the merger, including the

7 manner and basis for converting the interests in each constituent

8 organization into any combination of money, interests in the

9 surviving organization, and other consideration;

10 (d) If the surviving organization is to be created by the

11 merger, the surviving organization's organizational documents;

12 (e) If the surviving organization is not to be created

13 by the merger, any amendments to be made by the merger to the

14 surviving organization's organizational documents; and

15 (f) If a participant of a constituent limited cooperative

16 association will have personal liability with respect to a

17 surviving organization, the identity by descriptive class or other

18 reasonable manner of the participant.

19 Sec. 123. (1) Unless otherwise provided in the articles

20 of organization or bylaws, the plan of merger shall be approved by

21 a majority vote of the board of directors.

22 (2) The board of directors shall mail or otherwise

23 transmit or deliver in a record to each participant:

24 (a) The plan of merger;

25 (b) A recommendation that the participants approve

1 the plan of consolidation or merger unless the board makes a
2 determination because of conflicts of interest or other special
3 circumstances that it should not make such a recommendation;

4 (c) If the board makes no recommendation, the basis for
5 that decision;

6 (d) Any condition of its submission of the plan of merger
7 to the participants; and

8 (e) Notice of the meeting in the same manner as a special
9 participants' meeting.

10 Sec. 124. (1) Unless the articles of organization or
11 bylaws provide for a greater quantum and subject to section 39
12 of this act, a plan of merger shall be approved by at least a
13 two-thirds vote of patron participants voting under section 39 of
14 this act by at least a two-thirds vote of investor participants, if
15 any, voting under section 42 of this act.

16 (2) Subject to any contractual rights, after a merger is
17 approved, and at any time before a filing is made under section
18 126 of this act, a constituent limited cooperative association may
19 amend the plan of merger or abandon the planned merger:

20 (a) As provided in the plan; and

21 (b) Except as prohibited by the plan, with the same
22 consent as was required to approve the plan.

23 Sec. 125. (1) Unless the articles of organization or
24 bylaws of the limited cooperative association or the organic law
25 or articles of organization or bylaws of the other organization

1 otherwise provide, a limited cooperative association that owns at
2 least ninety percent of each class of the voting power of a
3 subsidiary organization may merge the subsidiary into itself or
4 into another subsidiary.

5 (2) The limited cooperative association owing at least
6 ninety percent of the subsidiary organization before the merger
7 shall notify each other owner of the subsidiary, if any, of the
8 merger within ten days after the effective date of the merger.

9 Sec. 126. (1) After each constituent organization has
10 approved a merger, articles of merger shall be signed on behalf
11 of each other preexisting constituent organization by an authorized
12 representative.

13 (2) The articles of merger shall include:

14 (a) The name and form of each constituent organization
15 and the jurisdiction of its governing statute;

16 (b) The name and form of the surviving organization,
17 the jurisdiction of its governing statute, and, if the surviving
18 organization is created by the merger, a statement to that effect;

19 (c) The date the merger is effective under the governing
20 statute of the surviving organization;

21 (d) If the surviving organization is to be created by the
22 merger:

23 (i) If it will be a limited cooperative association, the
24 limited cooperative association's articles of organization; or

25 (ii) If it will be an organization other than a limited

1 cooperative association, the organizational document that creates
2 the organization;

3 (e) If the surviving organization preexists the merger,
4 any amendments provided for in the plan of merger for the
5 organizational document that created the organization;

6 (f) A statement as to each constituent organization that
7 the merger was approved as required by the organization's governing
8 statute;

9 (g) If the surviving organization is a foreign
10 organization not authorized to transact business in this state, the
11 street and mailing addresses of an office which the Secretary of
12 State may use for the purposes of service of process; and

13 (h) Any additional information required by the governing
14 statute of any constituent organization.

15 (3) Each constituent limited cooperative association
16 shall deliver the articles of merger for filing in the office
17 of the Secretary of State.

18 (4) A merger becomes effective under this section:

19 (a) If the surviving organization is a limited
20 cooperative association, upon the later of:

21 (i) Compliance with subsection (3) of this section; or

22 (ii) Subject to section 19 of this act, as specified in
23 the articles of consolidation or merger; or

24 (b) If the surviving organization is not a limited
25 cooperative association, as provided by the governing statute of

1 the surviving organization.

2 Sec. 127. When a merger becomes effective:

3 (1) The surviving organization continues or comes into
4 existence;

5 (2) Each constituent organization that merges into the
6 surviving organization ceases to exist as a separate entity;

7 (3) All property owned by each constituent organization
8 that ceases to exist vests in the surviving organization;

9 (4) All debts, liabilities, and other obligations of
10 each constituent organization that ceases to exist continue as
11 obligations of the surviving organization;

12 (5) An action or proceeding pending by or against any
13 constituent organization that ceases to exist may be continued as
14 if the merger had not occurred;

15 (6) Except as prohibited by other law, all of the
16 rights, privileges, immunities, powers, and purposes of each
17 constituent organization that ceases to exist vest in the surviving
18 organization;

19 (7) Except as otherwise provided in the plan of merger,
20 the terms and conditions of the plan take effect;

21 (8) Except as otherwise agreed, if a constituent limited
22 cooperative association ceases to exist, the merger does not
23 dissolve the limited cooperative association for purposes of
24 section 87 of this act;

25 (9) If the surviving organization is created by the

1 merger:

2 (a) If it is a limited cooperative association, the
3 articles of organization become effective; or

4 (b) If it is an organization other than a limited
5 cooperative association, the organizational document that creates
6 the organization becomes effective; and

7 (10) If the surviving organization exists before the
8 merger, any amendments provided for in the articles of merger for
9 the organizational document that created the organization become
10 effective.

11 Sec. 128. (1) The limited cooperative associations may
12 agree to substitute the word consolidations for the term merger
13 under this section, if:

14 (a) Each constituent organization is a limited
15 cooperative association or its governing statute expressly provides
16 for a consolidation; and

17 (b) The surviving organization is a limited cooperative
18 association or its governing statute expressly provides for a
19 consolidation.

20 (2) All provisions governing mergers or using the term
21 merger in the Nebraska Limited Cooperative Association Act shall
22 apply equally to mergers that the constituent organizations choose
23 to name consolidations under subsection (1) of this section.

24 Sec. 129. Participant approval by at least two-thirds of
25 the patron participants voting under section 39 of this act and by

1 at least a two-thirds vote of the investor participants, if voting,
2 under section 42 of this act, is required for a limited cooperative
3 association to sell, lease, exchange, or otherwise dispose of all
4 or substantially all of the assets of the limited cooperative
5 association.

6 Sec. 130. To dispose of assets subject to section 129 of
7 this act:

8 (1) The proposed disposition shall be approved by a
9 majority vote of the board of directors unless a greater vote is
10 required by the articles of organization or bylaws; and

11 (2) The board of directors shall mail or otherwise
12 transmit or deliver in a record to each participant notice of a
13 special meeting of the participants as required by section 35 of
14 this act that sets forth:

15 (a) The terms of the proposed disposition;

16 (b) A recommendation that the participants approve the
17 disposition unless the board determines because of conflict of
18 interest or other special circumstances it should not make such a
19 recommendation;

20 (c) If the board makes no recommendation, the basis of
21 that decision;

22 (d) Any condition of its submission of the proposed
23 disposition to the participants; and

24 (e) Notice of the meeting in the same manner as a special
25 participants meeting under sections 35 and 36 of this act.

1 Sec. 131. Disposition of assets subject to section 129 of
2 this act shall be consented to by:

3 (1) At least two-thirds vote of patron participants
4 voting under section 39 of this act; and

5 (2) At least a two-thirds vote of investor participants,
6 if any, under section 42 of this act.

7 Sec. 132. Participant interests offered or sold by a
8 limited cooperative association are exempt from the Securities Act
9 of Nebraska to the extent interests offered or sold by other
10 types of organizations are exempt under subdivision (15) of section
11 8-1111.

12 Sec. 133. Limited cooperative associations have the
13 same immunities, rights, and privileges provided other types of
14 associations formed under other laws of this state and shall be
15 exempt from those laws to the same extent, but only to the same
16 extent, as those entities organized under sections 21-1301 to
17 21-1339 or the Nonstock Cooperative Marketing Act are exempt.

18 Sec. 134. Section 77-2716, Revised Statutes Cumulative
19 Supplement, 2006, is amended to read:

20 77-2716 (1) The following adjustments to federal adjusted
21 gross income or, for corporations and fiduciaries, federal taxable
22 income shall be made for interest or dividends received:

23 (a) There shall be subtracted interest or dividends
24 received by the owner of obligations of the United States and its
25 territories and possessions or of any authority, commission, or

1 instrumentality of the United States to the extent includable in
2 gross income for federal income tax purposes but exempt from state
3 income taxes under the laws of the United States;

4 (b) There shall be subtracted that portion of the
5 total dividends and other income received from a regulated
6 investment company which is attributable to obligations described
7 in subdivision (a) of this subsection as reported to the recipient
8 by the regulated investment company;

9 (c) There shall be added interest or dividends received
10 by the owner of obligations of the District of Columbia, other
11 states of the United States, or their political subdivisions,
12 authorities, commissions, or instrumentalities to the extent
13 excluded in the computation of gross income for federal income
14 tax purposes except that such interest or dividends shall not be
15 added if received by a corporation which is a regulated investment
16 company;

17 (d) There shall be added that portion of the total
18 dividends and other income received from a regulated investment
19 company which is attributable to obligations described in
20 subdivision (c) of this subsection and excluded for federal
21 income tax purposes as reported to the recipient by the regulated
22 investment company; and

23 (e)(i) Any amount subtracted under this subsection shall
24 be reduced by any interest on indebtedness incurred to carry the
25 obligations or securities described in this subsection or the

1 investment in the regulated investment company and by any expenses
2 incurred in the production of interest or dividend income described
3 in this subsection to the extent that such expenses, including
4 amortizable bond premiums, are deductible in determining federal
5 taxable income.

6 (ii) Any amount added under this subsection shall be
7 reduced by any expenses incurred in the production of such income
8 to the extent disallowed in the computation of federal taxable
9 income.

10 (2) There shall be allowed a net operating loss derived
11 from or connected with Nebraska sources computed under rules
12 and regulations adopted and promulgated by the Tax Commissioner
13 consistent, to the extent possible under the Nebraska Revenue
14 Act of 1967, with the laws of the United States. For a resident
15 individual, estate, or trust, the net operating loss computed
16 on the federal income tax return shall be adjusted by the
17 modifications contained in this section. For a nonresident
18 individual, estate, or trust or for a partial-year resident
19 individual, the net operating loss computed on the federal return
20 shall be adjusted by the modifications contained in this section
21 and any carryovers or carrybacks shall be limited to the portion of
22 the loss derived from or connected with Nebraska sources.

23 (3) There shall be subtracted from federal adjusted gross
24 income for all taxable years beginning on or after January 1, 1987,
25 the amount of any state income tax refund to the extent such refund

1 was deducted under the Internal Revenue Code, was not allowed in
2 the computation of the tax due under the Nebraska Revenue Act of
3 1967, and is included in federal adjusted gross income.

4 (4) Federal adjusted gross income, or, for a fiduciary,
5 federal taxable income shall be modified to exclude the portion of
6 the income or loss received from a small business corporation with
7 an election in effect under subchapter S of the Internal Revenue
8 Code or from a limited liability company organized pursuant to the
9 Limited Liability Company Act that is not derived from or connected
10 with Nebraska sources as determined in section 77-2734.01.

11 (5) There shall be subtracted from federal adjusted gross
12 income or, for corporations and fiduciaries, federal taxable income
13 dividends received or deemed to be received from corporations which
14 are not subject to the Internal Revenue Code.

15 (6) There shall be subtracted from federal taxable income
16 a portion of the income earned by a corporation subject to the
17 Internal Revenue Code of 1986 that is actually taxed by a foreign
18 country or one of its political subdivisions at a rate in excess
19 of the maximum federal tax rate for corporations. The taxpayer may
20 make the computation for each foreign country or for groups of
21 foreign countries. The portion of the taxes that may be deducted
22 shall be computed in the following manner:

23 (a) The amount of federal taxable income from operations
24 within a foreign taxing jurisdiction shall be reduced by the amount
25 of taxes actually paid to the foreign jurisdiction that are not

1 deductible solely because the foreign tax credit was elected on the
2 federal income tax return;

3 (b) The amount of after-tax income shall be divided by
4 one minus the maximum tax rate for corporations in the Internal
5 Revenue Code; and

6 (c) The result of the calculation in subdivision (b) of
7 this subsection shall be subtracted from the amount of federal
8 taxable income used in subdivision (a) of this subsection. The
9 result of such calculation, if greater than zero, shall be
10 subtracted from federal taxable income.

11 (7) Federal adjusted gross income shall be modified to
12 exclude any amount repaid by the taxpayer for which a reduction
13 in federal tax is allowed under section 1341(a)(5) of the Internal
14 Revenue Code.

15 (8) (a) Federal adjusted gross income or, for corporations
16 and fiduciaries, federal taxable income shall be reduced, to the
17 extent included, by income from interest, earnings, and state
18 contributions received from the Nebraska educational savings plan
19 trust created in sections 85-1801 to 85-1814.

20 (b) Federal adjusted gross income or, for corporations
21 and fiduciaries, federal taxable income shall be reduced, to the
22 extent not deducted for federal income tax purposes, by the amount
23 of any gift, grant, or donation made to the Nebraska educational
24 savings plan trust for deposit in the endowment fund of the trust.

25 (c) Federal adjusted gross income or, for corporations

1 and fiduciaries, federal taxable income shall be reduced by any
2 contributions as a participant in the Nebraska educational savings
3 plan trust, to the extent not deducted for federal income tax
4 purposes, but not to exceed five hundred dollars per married filing
5 separate return or one thousand dollars for any other return.

6 (d) Federal adjusted gross income or, for corporations
7 and fiduciaries, federal taxable income shall be increased by
8 the amount resulting from the cancellation of a participation
9 agreement refunded to the taxpayer as a participant in the Nebraska
10 educational savings plan trust to the extent previously deducted as
11 a contribution to the trust.

12 (9) (a) For income tax returns filed after September 10,
13 2001, for taxable years beginning or deemed to begin before January
14 1, 2006, under the Internal Revenue Code of 1986, as amended,
15 federal adjusted gross income or, for corporations and fiduciaries,
16 federal taxable income shall be increased by eighty-five percent
17 of any amount of any federal bonus depreciation received under
18 the federal Job Creation and Worker Assistance Act of 2002 or the
19 federal Jobs and Growth Tax Act of 2003, under section 168(k) or
20 section 1400L of the Internal Revenue Code of 1986, as amended,
21 for assets placed in service after September 10, 2001, and before
22 December 31, 2005.

23 (b) For a partnership, limited liability company,
24 cooperative, including any cooperative exempt from income taxes
25 under section 521 of the Internal Revenue Code of 1986, as amended,

1 limited cooperative association, subchapter S corporation, or
2 joint venture, the increase shall be distributed to the partners,
3 members, shareholders, patrons, or beneficiaries in the same
4 manner as income is distributed for use against their income tax
5 liabilities.

6 (c) For a corporation with a unitary business having
7 activity both inside and outside the state, the increase shall be
8 apportioned to Nebraska in the same manner as income is apportioned
9 to the state by section 77-2734.05.

10 (d) The amount of bonus depreciation added to federal
11 adjusted gross income or, for corporations and fiduciaries, federal
12 taxable income by this subsection shall be subtracted in a
13 later taxable year. Twenty percent of the total amount of bonus
14 depreciation added back by this subsection for tax years beginning
15 or deemed to begin before January 1, 2003, under the Internal
16 Revenue Code of 1986, as amended, may be subtracted in the first
17 taxable year beginning or deemed to begin on or after January 1,
18 2005, under the Internal Revenue Code of 1986, as amended, and
19 twenty percent in each of the next four following taxable years.
20 Twenty percent of the total amount of bonus depreciation added back
21 by this subsection for tax years beginning or deemed to begin on or
22 after January 1, 2003, may be subtracted in the first taxable year
23 beginning or deemed to begin on or after January 1, 2006, under the
24 Internal Revenue Code of 1986, as amended, and twenty percent in
25 each of the next four following taxable years.

1 (10) For taxable years beginning or deemed to begin on
2 or after January 1, 2003, and before January 1, 2006, under the
3 Internal Revenue Code of 1986, as amended, federal adjusted gross
4 income or, for corporations and fiduciaries, federal taxable income
5 shall be increased by the amount of any capital investment that is
6 expensed under section 179 of the Internal Revenue Code of 1986,
7 as amended, that is in excess of twenty-five thousand dollars that
8 is allowed under the federal Jobs and Growth Tax Act of 2003.
9 Twenty percent of the total amount of expensing added back by
10 this subsection for tax years beginning or deemed to begin on or
11 after January 1, 2003, may be subtracted in the first taxable year
12 beginning or deemed to begin on or after January 1, 2006, under the
13 Internal Revenue Code of 1986, as amended, and twenty percent in
14 each of the next four following tax years.

15 (11)(a) Federal adjusted gross income shall be reduced
16 by contributions, up to two thousand dollars per married filing
17 jointly return or one thousand dollars for any other return, and
18 any investment earnings made as a participant in the Nebraska
19 long-term care savings plan under the Long-Term Care Savings Plan
20 Act, to the extent not deducted for federal income tax purposes.

21 (b) Federal adjusted gross income shall be increased by
22 the withdrawals made as a participant in the Nebraska long-term
23 care savings plan under the act by a person who is not a qualified
24 individual or for any reason other than transfer of funds to a
25 spouse, long-term care expenses, long-term care insurance premiums,

1 or death of the participant, including withdrawals made by reason
2 of cancellation of the participation agreement or termination of
3 the plan, to the extent previously deducted as a contribution or as
4 investment earnings.

5 Sec. 135. Section 77-27,187.01, Revised Statutes
6 Cumulative Supplement, 2006, is amended to read:

7 77-27,187.01 For purposes of the Nebraska Advantage Rural
8 Development Act, unless the context otherwise requires:

9 (1) Any term has the same meaning as used in the Nebraska
10 Revenue Act of 1967;

11 (2) Equivalent Nebraska employees means the number of
12 Nebraska employees computed by dividing the total hours paid in a
13 year to Nebraska employees by the product of forty times the number
14 of weeks in a year;

15 (3) Livestock modernization or expansion means the
16 construction, improvement, or acquisition of buildings, facilities,
17 or equipment for livestock housing, confinement, feeding,
18 production, and waste management;

19 (4) Livestock production has the same meaning as in
20 section 77-5203;

21 (5) Nebraska employee means an individual who is either a
22 resident or partial-year resident of Nebraska;

23 (6) Qualified employee leasing company means a company
24 which places all employees of a client-lessee on its payroll and
25 leases such employees to the client-lessee on an ongoing basis

1 for a fee and, by written agreement between the employee leasing
2 company and a client-lessee, grants to the client-lessee input into
3 the hiring and firing of the employees leased to the client-lessee;

4 (7) Related taxpayers includes any corporations that are
5 part of a unitary business under the Nebraska Revenue Act of 1967
6 but are not part of the same corporate taxpayer, any business
7 entities that are not corporations but which would be a part of
8 the unitary business if they were corporations, and any business
9 entities if at least fifty percent of such entities are owned by
10 the same persons or related taxpayers and family members as defined
11 in the ownership attribution rules of the Internal Revenue Code of
12 1986, as amended;

13 (8) Taxpayer means a corporate taxpayer or other person
14 subject to either an income tax imposed by the Nebraska Revenue
15 Act of 1967 or a franchise tax under Chapter 77, article 38, or a
16 partnership, limited liability company, subchapter S corporation,
17 cooperative, including a cooperative exempt under section 521 of
18 the Internal Revenue Code of 1986, as amended, limited cooperative
19 association, or joint venture that is or would otherwise be a
20 member of the same unitary group if incorporated, which is,
21 or whose partners, members, or owners representing an ownership
22 interest of at least ninety percent of the control of such
23 entity are, subject to or exempt from such taxes, and any other
24 partnership, limited liability company, subchapter S corporation,
25 cooperative, including a cooperative exempt under section 521 of

1 the Internal Revenue Code of 1986, as amended, limited cooperative
2 association, or joint venture when the partners, members, or owners
3 representing an ownership interest of at least ninety percent of
4 the control of such entity are subject to or exempt from such
5 taxes; and

6 (9) Year means the taxable year of the taxpayer.

7 Sec. 136. Section 77-27,194, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

9 77-27,194 The credit allowed under the Nebraska Advantage
10 Rural Development Act shall not be transferable except in the
11 following situations:

12 (1) Any credit allowable to a partnership, a limited
13 liability company, a subchapter S corporation, a cooperative,
14 including a cooperative exempt under section 521 of the
15 Internal Revenue Code of 1986, as amended, a limited cooperative
16 association, or an estate or trust may be distributed to the
17 partners, limited liability company members, shareholders, patrons,
18 participants, or beneficiaries. Any credit distributed shall be
19 distributed in the same manner as income is distributed. A credit
20 distributed shall be considered a credit used and the partnership,
21 limited liability company, subchapter S corporation, cooperative,
22 including a cooperative exempt under section 521 of the Internal
23 Revenue Code of 1986, as amended, limited cooperative association,
24 estate, or trust shall be liable for any repayment under section
25 77-27,188.02;

1 (2) The incentives previously allowed and the future
2 allowance of incentives may be transferred when a project covered
3 by an agreement is transferred by sale or lease to another taxpayer
4 or in an acquisition of assets qualifying under section 381 of the
5 Internal Revenue Code of 1986;

6 (3) The acquiring taxpayer, as of the date of
7 notification of the Tax Commissioner of the completed transfer,
8 shall be entitled to any unused credits and to any future
9 incentives allowable under the act;

10 (4) The acquiring taxpayer shall be liable for any
11 repayment that becomes due after the date of the transfer for
12 the repayment of any benefits received either before or after the
13 transfer; and

14 (5) If a taxpayer operating a qualifying business and
15 allowed a credit under section 77-27,188 dies and there is credit
16 remaining after the filing of the final return for the taxpayer,
17 the personal representative shall determine the distribution of the
18 credit or any remaining carryover with the initial fiduciary return
19 filed for the estate. The determination of the distribution of
20 credit may be changed only after obtaining the permission of the
21 Tax Commissioner.

22 Sec. 137. Section 77-5509, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 77-5509 Company means (1) any person subject to sales and
25 use taxes and either the income tax imposed by the Nebraska Revenue

1 Act of 1967 or the franchise tax under sections 77-3801 to 77-3807,
2 (2) any corporation, partnership, limited liability company, or
3 joint venture that is or would otherwise be a member of the
4 same unitary group, if incorporated, which is, or whose partners,
5 members, or owners are, subject to such taxes, and any other
6 partnership, limited liability company, subchapter S corporation,
7 or joint venture when the partners, owners, shareholders, or
8 members are subject to such taxes, and (3) any cooperative exempt
9 from such taxes under section 521 of the Internal Revenue Code of
10 1986, as amended, and (4) any limited cooperative association.

11 Sec. 138. Section 77-5719, Revised Statutes Cumulative
12 Supplement, 2006, is amended to read:

13 77-5719 Taxpayer means any person subject to sales and
14 use taxes under the Nebraska Revenue Act of 1967 and subject to
15 withholding under section 77-2753 and any corporation, partnership,
16 limited liability company, cooperative, including a cooperative
17 exempt under section 521 of the Internal Revenue Code of 1986,
18 as amended, limited cooperative association, or joint venture that
19 is or would otherwise be a member of the same unitary group, if
20 incorporated, that is subject to such sales and use taxes or such
21 withholding. Taxpayer does not include a political subdivision or
22 an organization that is exempt from income taxes under section
23 501(a) of the Internal Revenue Code of 1986, as amended, or any
24 partnership, limited liability company, cooperative, including a
25 cooperative exempt under section 521 of the Internal Revenue Code

1 of 1986, as amended, limited cooperative association, or joint
2 venture in which political subdivisions or organizations described
3 in section 501(c) or (d) of the code hold an ownership interest of
4 ten percent or more.

5 Sec. 139. Section 77-5728, Revised Statutes Cumulative
6 Supplement, 2006, is amended to read:

7 77-5728 (1) The incentives allowed under the Nebraska
8 Advantage Act shall not be transferable except in the following
9 situations:

10 (a) Any credit allowable to a partnership, a limited
11 liability company, a subchapter S corporation, a cooperative,
12 including a cooperative exempt under section 521 of the
13 Internal Revenue Code of 1986, as amended, a limited cooperative
14 association, or an estate or trust may be distributed to the
15 partners, members, shareholders, patrons, or beneficiaries in the
16 same manner as income is distributed for use against their income
17 tax liabilities, and such partners, members, shareholders, or
18 beneficiaries shall be deemed to have made an underpayment of
19 their income taxes for any recapture required by section 77-5727.
20 A credit distributed shall be considered a credit used and the
21 partnership, limited liability company, subchapter S corporation,
22 cooperative, including a cooperative exempt under section 521
23 of the Internal Revenue Code of 1986, as amended, a limited
24 cooperative association, estate, or trust shall be liable for any
25 repayment required by section 77-5727; and

1 (b) The incentives previously allowed and the future
2 allowance of incentives may be transferred when a project covered
3 by an agreement is transferred in its entirety by sale or lease to
4 another taxpayer or in an acquisition of assets qualifying under
5 section 381 of the Internal Revenue Code of 1986, as amended.

6 (2) The acquiring taxpayer, as of the date of
7 notification of the Tax Commissioner of the completed transfer,
8 shall be entitled to any unused credits and to any future
9 incentives allowable under the act.

10 (3) The acquiring taxpayer shall be liable for any
11 recapture that becomes due after the date of the transfer for
12 the repayment of any benefits received either before or after the
13 transfer.

14 (4) If a taxpayer operating a project and allowed a
15 credit under the act dies and there is a credit remaining after
16 the filing of the final return for the taxpayer, the personal
17 representative shall determine the distribution of the credit or
18 any remaining carryover with the initial fiduciary return filed for
19 the estate. The determination of the distribution of the credit
20 may be changed only after obtaining the permission of the Tax
21 Commissioner.

22 Sec. 140. Section 77-5903, Revised Statutes Cumulative
23 Supplement, 2006, is amended to read:

24 77-5903 For purposes of the Nebraska Advantage
25 Microenterprise Tax Credit Act:

1 (1) Actively engaged in the operation of a microbusiness
2 means personal involvement on a continuous basis in the daily
3 management and operation of the business;

4 (2) Distressed area means a municipality, county,
5 unincorporated area within a county, or census tract in Nebraska
6 that has (a) an unemployment rate which exceeds the statewide
7 average unemployment rate, (b) a per capita income below the
8 statewide average per capita income, or (c) had a population
9 decrease between the two most recent federal decennial censuses;

10 (3) Equivalent employees means the number of employees
11 computed by dividing the total hours paid in a year by the product
12 of forty times the number of weeks in a year;

13 (4) Microbusiness means any business employing five or
14 fewer equivalent employees;

15 (5) New employment means the amount by which the total
16 compensation paid during the tax year to employees who are Nebraska
17 residents exceeds the total compensation paid to employees who are
18 Nebraska residents in the tax year prior to application;

19 (6) New investment means the increase in the applicant's
20 purchases of buildings and depreciable personal property located
21 in Nebraska and expenditures on repairs and maintenance on
22 property located in Nebraska, not including vehicles required
23 to be registered for operation on the roads and highways of
24 this state, during the tax year. If the buildings or depreciable
25 personal property is leased, the amount of new investment shall be

1 the increase in average net annual rents multiplied by the number
2 of years of the lease for which the taxpayer is bound, not to
3 exceed ten years;

4 (7) Related persons means (a) any corporation,
5 partnership, limited liability corporation, cooperative, including
6 cooperatives exempt under section 521 of the Internal Revenue Code
7 of 1986, as amended, or joint venture which is or would otherwise
8 be a member of the same unitary group, if incorporated, or any
9 person who is considered to be a related person under either
10 section 267(b) and (c) or section 707(b) of the Internal Revenue
11 Code of 1986, as amended, and (b) any individual who is a spouse,
12 parent if the taxpayer is a minor, or minor son or daughter of
13 the taxpayer; and

14 (8) Taxpayer means any person subject to the income tax
15 imposed by the Nebraska Revenue Act of 1967, any corporation,
16 partnership, limited liability company, cooperative, including a
17 cooperative exempt under section 521 of the Internal Revenue Code
18 of 1986, as amended, limited cooperative association, or joint
19 venture that is or would otherwise be a member of the same unitary
20 group, if incorporated, which is, or whose partners, members,
21 or owners representing an ownership interest of at least ninety
22 percent of such entity are, subject to such tax, and any other
23 partnership, limited liability company, subchapter S corporation,
24 cooperative, including a cooperative exempt under section 521 of
25 the Internal Revenue Code of 1986, as amended, limited cooperative

1 association, or joint venture when the partners, shareholders,
2 or members representing an ownership interest of at least ninety
3 percent of such entity are subject to such tax.

4 Sec. 141. This act becomes operative on January 1, 2008.

5 Sec. 142. Original section 77-5509, Reissue Revised
6 Statutes of Nebraska, and sections 77-2716, 77-27,187.01,
7 77-27,194, 77-5719, 77-5728, and 77-5903, Revised Statutes
8 Cumulative Supplement, 2006, are repealed.